

67666-1

67666-1

No. 67666-1-1

**IN THE COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON**

NGUYET TANG, individually,

Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT
SECURITY,

Respondent.

AMENDED OPENING BRIEF
TO INCLUDE PAGE NUMBERS

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TABLE OF AUTHORITIES

Washington Appellate Cases

<i>Brandley v. Employment Security</i> , 23 Wn. App. 339, 595 P.2d 565 (1979).....	6
<i>Daily Herald Co. v. Dept. of Employment Sec.</i> , 91 Wash.2d 559, 588 P.2d 1157 (1979).....	6
<i>Franklin County Sheriff's Office v. Sellers</i> , 97 Wash.2d 317, 646 P.2d 113 (1982).....	6
<i>G & G Elec. & Plumbing Dist. v. State Dept. of Employment Sec.</i> , 58 Wn. App. 410, 793 P.2d 987 (1990).....	10
<i>Hussa v. Employment Sec. Dept. of State of Wash.</i> , 34 Wn. App. 857, 664 P.2d 1286 (1983).....	10
<i>In Re Estate of Jones</i> , 152 Wash.2d 1, 93 P.3d 147 (2004).....	6
<i>Kenna v. Employment Security Department</i> , 14 Wn. App. 898, 545 P.2d 1248 (1976).....	5
<i>Netversant v. Labor & Industries</i> , 133 Wn. App. 813, 138 P.3d 161 (2006).....	6
<i>Postema v. Pollution Control Hearings Bd.</i> , 142 Wash.2d 68, 11 P.3d 726 (2000).....	6
<i>Property Holding and Development Inc. v. Dept. of Employment Security</i> , 15 Wn. App. 326, 546 P.2d 58 (1976).....	6
<i>Read v. Employment Security</i> , 62 Wn. App. 227, 813 P.2d 1262 (1991).....	7
<i>Spain v. Employment Sec. Dept.</i> , 164 Wash.2d 252, 185 P.3d 1188 (2008).....	10

<i>Sweitzer v. Department of Empl. Sec.</i> , 43 Wn. App. 511, 718 P.2d 3 (1986)	6
<i>William Dickson Co. v. Puget Sound Air Pollution Control Agency</i> , 81 Wn. App. 403, 914 P.2d 750 (1996)	6

Washington Statutes

RCW 34.04.130	5
RCW 34.05.570	5, 6
RCW 50.20.010	9, 12
RCW 50.20.050	9, 10, 12
RCW 50.32.120	5

I. STATEMENT OF THE CASE

The appellant, Nguyet Tang, appears before the Court pursuant to the provisions of RCW 50.32.120 and RCW 34.04.130 of the Administrative Procedure Act. She appeals a final decision of the Commissioner of the Employment Security Department issued December 30, 2010 and the Findings of Fact, Conclusions of Law, Order signed by King County Superior Court Judge Cheryl Carey signed August 19, 2011. CP 81-83, CP 6-10, CR 116-123. The decisions determined that appellant voluntarily separated from employment without good cause and disqualified her from receipt of unemployment benefits. *Id.* Judge Carey's factual findings and conclusions of law on the ultimate issue of Ms. Tang's alleged voluntary separation without good cause are not supported by substantial evidence in the record. CP 1-4, 81-83. The evidence shows that Ms. Tang opposed workplace discrimination and was retaliated against, resulting in her separation with good cause.

II. STANDARD OF REVIEW

The Court is reviewing a final decision of the Employment Security Department and a final order by King County Superior Court, an administrative agency of the State of Washington. CP 6-10, 81-83. RCW 50.32.120 of the Employment Security Act provides that judicial review of a decision of the Commissioner may be taken only in accordance with RCW 34.05.570 of the Administrative Procedure Act. Judicial review by

this court is based on the Superior Court's and Commissioner's Decision and not the decision of the administrative appeal tribunal. *Kenna v. Employment Security Department*, 14 Wn. App. 898, 545 P.2d 1248 (1976). However, where, in many cases, the Superior Court and Commissioner's Decision wholly incorporates the finding of the ALJ and thus is central to the Court's analysis, the court must review both the Commissioner's analysis and the findings of the ALJ. The Court reviews the record made before the appeal tribunal in determining whether the decision should be reversed, modified, or sustained. *Id.*

The issue whether the Appellant voluntarily separated without good cause is a mixed question of law and fact. *Sweitzer v. Department of Empl. Sec.*, 43 Wn. App. 511, 515, 718 P.2d 3 (1986). These questions exist "where there is a dispute both as to the propriety of the inferences drawn by the agency from the raw facts and as to the meaning of the statutory terms." *Franklin County Sheriff's Office v. Sellers*, 97 Wash.2d 317, 330, 646 P.2d 113 (1982) (quoting *Daily Herald Co. v. Dept. of Employment Sec.*, 91 Wash.2d 559, 561, 588 P.2d 1157 (1979)). See also CP 3-10.

Before proceeding to review any mixed questions of law and fact, the court must first determine the correct facts by reviewing the record under the correct standard for review of facts. *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 411, 914

P.2d 750 (1996). Based on the correct facts, the court then reviews the record by applying the correct law to the correct facts. *Property Holding and Development Inc. v. Dept. of Employment Security*, 15 Wn. App. 326, 546 P.2d 58 (1976); *Brandley v. Employment Security*, 23 Wn. App. 339, 595 P.2d 565 (1979).

Pursuant to RCW 34.05.570(3)(e), an order may be overturned if it is not supported by evidence that is substantial when viewed in light of the whole record before the court. Substantial evidence is a “sufficient quantum of evidence to persuade a fair minded person of the truth of a declared premise.” *Netversant v. Labor & Industries*, 133 Wn. App. 813, 138 P.3d 161 (2006). In other words, “substantial evidence is evidence that is sufficient to persuade a rational, fair-minded person of the truth of the finding.” *In Re Estate of Jones*, 152 Wash.2d 1, 8, 93 P.3d 147 (2004).

In contrast to the standard for reviewing the factual record, an agency’s interpretation or application of the law is reviewed *de novo* under an error of law standard, but weight is accorded to the agency’s view of the law it administers. *Postema v. Pollution Control Hearings Bd.*, 142 Wash.2d 68, 77, 11 P.3d 726 (2000). Both “pure” questions of law and “mixed questions of law and fact” are reviewed under the same *de novo* standard of review set forth in RCW 34.05.570(3). *Read v. Employment Security*, 62 Wn. App. 227, 813 P.2d 1262 (1991). Here, the Court must apply both standards of review to this record.

III. ISSUES PRESENTED

Does substantial evidence exist, when viewed in light of the whole record before the Court, that the Appellant voluntarily separated without good cause when she had been the victim of racial and sexual harassment in the workplace, had reported the discrimination, no action was taken to end the discrimination, and Appellant was then retaliated against by having a commission-based job taken from her?

Did the Commissioner err by reversing the ALJ's finding No. 2 by basing the reversal on inadmissible evidence that was contrary to the admissible evidence presented by the Appellant?

IV. STATEMENT OF FACTS SUPPORTED BY RECORD

A. Ms. Tang's Employment History and Separation

Nguyet Tang (hereinafter "Tang") was a long-term employee of Lexus of Bellevue (hereinafter "Lexus"). She was employed from June 8, 2006 to on or about July 30, 2010. CP 3, CR 119. At the time of her separation, Ms. Tang was working as a finance and leasing consultant. CP 3-10, CR 13. She was earning approximately \$140,000 to \$160,000 per year based entirely on commission. *Id.* Ms. Tang's performance at work was exemplary. *Id.*, CR 40.

From the time that Ms. Tang started working at Lexus, Sales Manager Nick Wilcox repeatedly made racial comments in Ms. Tang's presence. CP 3, CR 24, 37, 109. In August of 2009 Ms. Tang spoke with

Lexus employee/instructor Gary McGriff about the sexual harassment and racial comments that she had been subjected to while working at Lexus. Id, CR 34-35. Mr. McGriff told Ms. Tang that she needed to document the incidents. CP 3, CR 35. Ms. Tang reported the discrimination and harassment to numerous managers at Lexus. CP 3, CR 37-39. In August of 2009 Ms. Tang told Lexus' General Manager, Mark Babcock, that she would start and continue to document all of the racial comments that Mr. Wilcox made at work. CP 4, CR 24, 35, 38. Ms. Tang continued to report harassment and discrimination to Mr. Babcock through the end of May of 2010. Id., CR 38, 43.

The finance and leasing consultants at Lexus took turns handling vehicle sales as the sales were made by the salespeople. CP 3-5, CR 25. On July 28, 2010, Ms. Tang worked on the financing of a used vehicle sale that required her to work approximately two hours later than normal. Id., CR 23. Ms. Tang sold the customers an extended warranty on the vehicle that cost \$3,800. Id., CR 29, 31. The next morning, the customers returned to Lexus complaining that they had found a comparable vehicle for sale at Lexus that carried a factory warranty. CP 3-10. The customers wanted to return the vehicle that they had purchased and instead purchase the vehicle with the factory warranty. Id., CR 30. Ms. Tang was not scheduled to be at work until approximately 2:00 p.m. that day. Id., CR 23. In situations such as this, the finance and leasing agent who had dealt

with the original sale would typically be called in to work on the transaction if they were not scheduled to work at the time. *Id.*, CR 23, 26-27.

Instead of calling Ms. Tang in to work on the transaction, Lexus' Sales Manager, Nick Wilcox, gave the sale to another finance and leasing agent who received the commission for the transaction. *Id.*, CR 23. Ms. Tang would have received no commission and would have had to wait her turn before she could work on another transaction. *Id.*, CR 28. Ms. Tang spoke with Lexus' General Manager, Mark Babcock, two times in person, once via email, and once via text message, requesting that the sale be returned to her. *Id.*, CR 29. Mr. Babcock refused to return the sale to Ms. Tang. *Id.* After having been harassed and discriminated against at Lexus for such a long period of time, Ms. Tang was emotionally crushed by this latest inequity. *Id.*

Ms. Tang was scheduled to work on Saturday, July 31, 2010. CP 3-10, CR 34. However, she informed Lexus that she was unable to work because of her emotional distress. *Id.* Ms. Tang told Mr. Babcock that she felt she was being treated unfairly. *Id.*, CR 32-33. She explained to the ALJ that what she meant by this was that Mr. Babcock sided with Mr. Wilcox, who had made racial comments to Ms. Tang throughout her time at Lexus. CP 3-10, CR 33. Ms. Tang felt that Mr. Wilcox and Mr. Babcock worked together to take the car deal away from her, knowing that

it would upset her – the last straw. *Id.*, CR 33-34. Mr. Babcock informed Ms. Tang that if she did not show up to work on July 31st, “ready willing and able” he would process her termination immediately. *Id.*, CR 87. Ms. Tang was unable to go to work on July 31st because of her emotional state. *Id.*, CR 34-36, 45. Ms. Tang contacted Lexus’ owner, Mr. O’Brien, crying and not herself. *Id.*, CR 35-36. Ms. Tang was terminated on the following Monday, August 2, 2010. *Id.*

B. Procedural History of ESD Claim and Petition for Review

Approximately one month after she was fired, Ms. Tang filed a claim for unemployment compensation. CP 6-10, CR 111. To her surprise and dismay, an initial order by ALJ Anderson, dated November 8, 2010, found that Ms. Tang did not separate from Lexus for good cause under RCW 50.20.050(2). *Id.*, CR 102. The ALJ did, however, find that Ms. Tang was able to, available for, and actively seeking work during the weeks at issue and was therefore not subject to denial under RCW 50.20.010(1)(c). *Id.*, CR 102-103. Ms. Tang promptly petitioned for review to the Commissioner of the Employment Security Department. CR 106-110. The Commissioner modified the ALJ’s findings and order, making several unfavorable and unsupported findings of fact and ruling that Ms. Tang was disqualified from receiving unemployment benefits pursuant to RCW 50.20.050(2)(a). *Id.*, CR 118-122. The Commissioner

also remanded the matter to the Department for further consideration of whether Ms. Tang complied with RCW 50.20.010(1)(c). *Id.*

V. ARGUMENT AND AUTHORITY

A. ALJ Anderson, the Commissioner and the Superior Court Erred In Finding that Ms. Tang Voluntarily Separated Without Good Cause When the Evidence Clearly Shows That She Had Good Cause to Separate Based Upon Continuing Unchecked Discrimination.

RCW 50.20.050 provides, in pertinent part:

(a) 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 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.

...

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

...

(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;

RCW 50.20.050(2)(a). The reasons listed in RCW 50.20.050(2)(a) that could qualify as “good cause” are not exhaustive. *Spain v. Employment Sec. Dept.*, 164 Wash.2d 252, 260-61, 185 P.3d 1188 (2008). “[A]n accumulation of factors, no single one of which would be enough, would impel a reasonably prudent person to quit a job. That notion is firmly embedded in common sense, as memorialized in the hoary axiom, ‘the

straw that broke the camel's back.’” *G & G Elec. & Plumbing Dist. v. State Dept. of Employment Sec.*, 58 Wn. App. 410, 413-14, 793 P.2d 987 (1990). A victim of sexual harassment in the workplace can have good cause for leaving employment even where the employee has not reported the harassment to her employer. *Hussa v. Employment Sec. Dept. of State of Wash.*, 34 Wn. App. 857, 664 P.2d 1286 (1983).

Substantial evidence in the record shows that Ms. Tang was repeatedly harassed and discriminated against while working for Lexus. CP 3-10, CR 24, 34-39, 67, 109. Unlike the Appellant in *Hussa*, who was found to have good cause for leaving employment, Ms. Tang repeatedly reported the harassment and discrimination to management, yet the harassment and discrimination continued. *Id.* The additional unfair treatment of Ms. Tang, Mr. Wilcox’s decision to take the sale away from Ms. Tang, was the straw that broke the camel’s back in this case. CR 34.

The Commissioner’s modified findings Nos. 3 through 13 also contain errors. In particular, the Commissioner discounted the substantial evidence that Ms. Tang was subjected to a racially hostile work environment by adopting irrelevant testimony by Mr. Babcock. CP 6-10, CR 119. The Commissioner noted that even though Ms. Tang complained of the conduct, Mr. Wilcox continued to make comments. *Id.* In the next sentence, however, the Commissioner states that “The employer does not condone discrimination or work-related harassment.” *Id.* This finding is

contrary to the facts of this case. The Commissioner appears to have reached this conclusion based upon irrelevant information regarding the number of Asian-Americans employed by Lexus. CR 119-120. Whether or not Lexus hired and retained other Asian-Americans is irrelevant to whether Ms. Tang experienced race-based harassment at work.

B. The Commissioner and the Superior Court Erred by Failing to Adopt the ALJ's Finding No. 2

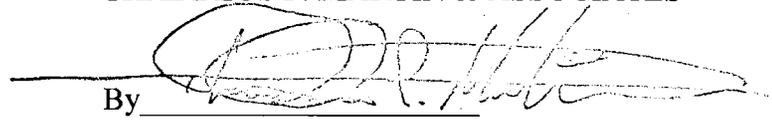
The Commissioner modified the ALJ's finding No. 2 in error. CP 6-10, CR 119. The ALJ found that Ms. Tang was willing and able to accept any offer of suitable work and sought work as directed by the Department. *Id.*, and CR 100. This was clearly based upon Ms. Tang's testimony that she had been seeking employment in the finance field. *Id.*, CR 16-19.

The Commissioner stated: "...the employer's general manager testified there are numerous employment opportunities consistent with claimant's experience in the claimant's labor market area." CP 6-10, CR 119. The Commissioner gave significant, misplaced, weight to Mr. Babcock's bald assertion that Ms. Tang could have easily gotten a finance job at another car dealership. *Id.*, and CR 69. Mr. Babcock presented no actual evidence that Ms. Tang could have gotten a finance position at a car dealership. Indeed, he only made that claim during his final statement, which is *not evidence*. *Id.*, CR 69. Therefore, the issue of Ms. Tang's

remand of the issue of Appellant's compliance with RCW 50.20.010(1)(c) as the Commissioner's reversal of the ALJ's finding was not supported by admissible evidence.

Respectfully submitted this 12th day of March, 2012.

THADDEUS P. MARTIN & ASSOCIATES

A handwritten signature in black ink, appearing to read 'Thaddeus P. Martin', is written over a horizontal line. The signature is stylized and cursive.

By
Thaddeus P. Martin, WSBA No. 28175
Attorney for Appellant

Tang , Appellant

Vs.

State of Washington, Respondent

CP

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KING COUNTY, WASHINGTON

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KING COUNTY SUPERIOR COURT

NGUYET TANG

Petitioner,

NO. 11-2-02858-5 KNT

CERTIFICATE OF AGENCY RECORD

v.

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT
Respondent.

I, MARK KIFOWIT, the undersigned Assistant Records Officer, representing the Employment Security Department of the State of Washington, hereby certify that the following Commissioner's Record contains all the matters considered in the above-entitled matter.

Dated this 1st day of March, 2011, at Olympia, Washington.



MARK KIFOWIT
Employment Security Department
Assistant Records Officer
(360) 586-2132

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

NGUYET TANG

Petitioner,

NO. 11-2-02858-5

v.

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT
Respondent.

COMMISSIONER'S RECORD

KING COUNTY SUPERIOR COURT CAUSE NO. 11-2-02858-5

**INDEX OF TRANSCRIPT
(TOTAL NUMBER OF PAGES: 101)**

	Page Nos.
Certificate of Agency Record.....	i
List of Witnesses	3
List of Exhibits	4
Transcript of hearing, held before OAH, on November 5, 2010.....	5-70
Certificate of Transcriber	71
Exhibits.....	72-97

**INDEX OF ADMINISTRATIVE RECORD
(TOTAL NUMBER OF PAGES: 35)**

Decision of Office of Administrative Hearings, Dated November 8, 2010.....	98-104
Petition for Review, Dated December 1, 2010	105-115
Decision of Commissioner, Dated December 30, 2010	116-123
Miscellaneous.....	124-132

OAH TRANSCRIPT

In the Matter of: Nguyet E. Tang
Administrative Hearing

1
BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
EMPLOYMENT SECURITY DEPARTMENT
STATE OF WASHINGTON

IN THE MATTER OF)
) DOCKET NO. 04-2010-36091
)
NGUYET EMILY TANG)

Pursuant to notice to all interested parties,
this matter came on regularly for hearing on the 5th day
of November, 2010, at Spokane, Washington, before
Rachelle Anderson, Administrative Law Judge.

Appearances were entered as follows:

Nguyet E. Tang, Claimant-Appellant
Mark Babcock, Employer - GM Lexus of Bellevue

The following proceedings were had, to wit:

1

In the Matter of: Nguyet E. Tang
Administrative Hearing

1	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS			
2	EMPLOYMENT SECURITY DEPARTMENT			
3	STATE OF WASHINGTON			
4				
5				
6	IN THE MATTER OF)		
)	DOCKET NO. 04-2010-36091	
7)		
	NGUYET E. TANG)		
8)	AT: Spokane, Washington	
	SSA No: XXX-XX-5457 9)	DATE: November 5, 2010	
9				
10				
11				
12	CLAIMANT'S WITNESSES			
13	WITNESS		ALJ	DIRECT
14	Nguyet Tang	11	18	42 21
15				
16				
17	EMPLOYER'S WITNESSES			
	WITNESS		ALJ	DIRECT
18	Mark Babcock	56	63	
19				
20				
21	CLOSING STATEMENT		PAGE NO.	
22	Nguyet Tang		65	
	Mark Babcock		68	
23				
24				
25				

In the Matter of; Nguyet E. Tang
Administrative Hearing

1	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS		
2	EMPLOYMENT SECURITY DEPARTMENT		
3	STATE OF WASHINGTON		
4			
5			
6	IN THE MATTER OF)	
)	DOCKET NO. 04-2010-36091
7)	
	NGUYET E. TANG)	
8)	AT: Spokane, Washington
	SSA NO: XXX-XX-5457 9)	DATE: November 5, 2010
9			
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11			
	No.	Exhibits	Identified Admitted
12			
	1	Notice of Hearing	8 11
13			
	2	Notice of Appeal	8 11
14			
	3	Determination Notice	9 11
15			
	4	Discharge Questionnaire	9 11
16			
	5	Claimant's Separation Statement	9 11
17			
18	6	Benefit Payment History	9 11
19			
20			
21			
22			
23			
24			
25			

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: Good afternoon. This is Judge
2 Rachelle Anderson and I'll be conducting today's
3 hearing. I've just turned on a recording device to
4 preserve this hearing for any further appeals. Today's
5 date is November 5, 2010, and it is now 3:05 p.m. I'm
6 in the Office of Administrative Hearings in Spokane,
7 Washington, and this is Docket No. 04-2010-36091 in the
8 matter of Ms. Nguyet Tang; is that correct?

9 MS. TANG: Nguyet Tang.

10 JUDGE ANDERSON: Nguyet Tang. Thank you,
11 Ms. Tang, I will be pronouncing your last name correctly
12 so I'll stick with that. And, ma'am, will you be
13 representing yourself today?

14 MS. TANG: Yes.

15 JUDGE ANDERSON: All right. And do you have any
16 witnesses you plan on calling?

17 MS. TANG: No.

18 JUDGE ANDERSON: Okay. And I'm wondering if I
19 have anyone on the line from Lexus of Bellevue?

20 MR. BABCOCK: Yes, you do. This is Mark
21 Babcock, General Manager of Lexus of Bellevue. And I
22 have Jlyn Albright, my accounting manager, in the room
23 with me.

24 JUDGE ANDERSON: Ms. Albright, can you please
25 spell your first and last name for me.

4

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 MS. ALBRIGHT: Certainly. It's J-l-y-n is the
2 first name and the last name is Albright,
3 A-l-b-r-i-g-h-t.

4 JUDGE ANDERSON: And, Ms. Albright, does your
5 first name have an apostrophe in it or is it simply
6 capital J, l-y-n?

7 MS. ALBRIGHT: That's, correct, no apostrophe.

8 JUDGE ANDERSON: Okay. And you are the accounts
9 manager?

10 MS. ALBRIGHT: I'm the accounting manager.

11 JUDGE ANDERSON: Accounting manager. Thank you
12 very much. All right.

13 Do you expect to call any other witnesses,
14 Mr. Babcock?

15 MR. BABCOCK: No, I don't.

16 JUDGE ANDERSON: All right. Are there any other
17 people on the line that have not yet identified
18 themselves? Okay. I'd like to first start by swearing
19 all of you in so that any testimony you give will be
20 under oath.

21 If I could please have all three of you raise
22 your right hand. Do you swear or affirm that the
23 testimony you are about to give will be the truth, the
24 whole truth, and nothing but the truth? Ms. Tang?

25 MS. TANG: Yes.

5

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: Mr. Babcock?

2 MR. BABCOCK: Yes, I do.

3 JUDGE ANDERSON: And, Ms. Albright?

4 MS. ALBRIGHT: Yes.

5 JUDGE ANDERSON: All right. Thank you. The
6 process we're going to follow today is that here in just
7 a moment I will call the matter to order, and I will
8 start by putting a brief introductory statement on the
9 record with the pertinent background information and
10 dates.

11 And then I will start by asking Ms. Tang a few
12 questions about the nature of her position, what she's
13 been doing since the job separation, job search, looking
14 for work, that kind of thing. After that we will move
15 on to the merits of the case, that being the
16 circumstances surrounding the job separation.

17 And I will start with you, Ms. Tang. I will
18 have you give me your version of the events and what led
19 to the job separation. I may have a few questions for
20 you after that. And then I will let Mr. Babcock ask you
21 some questions.

22 At the end of Ms. Tang's testimony we will turn
23 to the employer and do the same thing. I will let you
24 give me a statement, Mr. Babcock. I may have a few
25 questions for you, and then I'll let Ms. Tang ask you

6

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 some questions, and we'll follow that same routine with
2 Ms. Albright. After that I'll give both sides the
3 opportunity to give me a closing statement or summary
4 remarks. So, Ms. Tang, I'll let you do that first and
5 then I'll let Mr. Babcock give me a closing statement,
6 and then I'll call the matter to close and explain how I
7 issue my decisions.

8 Are there any questions about any of that or any
9 other questions before we get started? Ms. Tang?

10 MS. TANG: No.

11 JUDGE ANDERSON: And, Mr. Babcock?

12 MR. BABCOCK: No, there's not.

13 JUDGE ANDERSON: All right. Thank you. At this
14 time then may we please come to order. This is an
15 appeal brought by the claimant, Nguyet Tang.

16 The Office of Administrative Hearings is totally
17 separate from the Employment Security Department, and I
18 am not bound by the Employment Security Department's
19 decisions. This is a new hearing today and the outcome
20 may be different. I will consider and review testimony
21 and documents presented today to reach my decision.

22 If you disagree with my decision, you may appeal
23 if you do so in a timely fashion. You will receive a
24 written decision that will have the appeal instructions
25 included.

7

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 In this case the Employment Security Department
2 issued a Determination Notice on September 15, 2010, and
3 that determination stated that the claimant voluntarily
4 quit her job without good cause, therefore, she was
5 denied benefits. The claimant filed a timely appeal on
6 October 12, 2010, and the issues before me today are
7 whether the claimant was able to, available for, and
8 actively seeking work in accordance with the standards
9 of the statute and whether the claimant voluntarily quit
10 her job without good cause pursuant to RCW 50.20.050 or
11 was discharged for misconduct pursuant RCW 50.20.066.

12 Do you understand those issues before me today,
13 Ms. Tang?

14 MS. TANG: Yes.

15 JUDGE ANDERSON: And do you, Mr. Babcock?

16 MR. BABCOCK: Yes, I do.

17 JUDGE ANDERSON: All right. I'm going to at
18 this time identify the exhibits I have in front of me
19 for the record. They're marked on the bottom right-hand
20 corner. Exhibit 1 is the notice of today's hearing by
21 telephone WebEx. Exhibit 2 is the notice of the appeal
22 filed. That's dated October 12, 2010.

23 And if you could turn, Ms. Tang, to Exhibit 2,
24 Page 4, could you identify for me, is that your
25 signature there in the middle of the page?

8

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 MS. TANG: Right.

2 JUDGE ANDERSON: All right. Okay. Thank you.

3 MS. TANG: That's a fax.

4 JUDGE ANDERSON: Exhibit 3 is the determination
5 notice that's dated September 15, 2010. Exhibit 4 is
6 from the State of Washington Employment Security
7 Department and this is the discharge questionnaire.
8 This is dated August 28, 2010.

9 And, again, Ms. Tang, I'll ask if you could
10 identify for me on Exhibit 4, Page 3, is that your
11 signature in the middle of that page?

12 MS. TANG: That's right.

13 JUDGE ANDERSON: Okay. Thank you very much.
14 And then Exhibit 4 goes on for a total of ten pages with
15 some various attachments from Ms. Tang. Exhibit 5 is
16 titled "State of Washington Employment Security
17 Department Notice to Employer," it's the Claimant's
18 Separation Statement.

19 And if I could -- oh, I guess we don't have
20 Ms. Hunt on the line. This document, the two-page
21 document, looks like it was signed by someone named Nina
22 Hunt, and then that again goes on for one extra page.
23 There's an e-mail attached as Exhibit 5, Page 3.

24 And, finally, as Exhibit 6 I have a one-page
25 document that's the Washington State Employment Security

9

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 MS. TANG: Right.

2 JUDGE ANDERSON: What was the day your job
3 ended?

4 MS. TANG: March -- no, July 30th of 2010.

5 JUDGE ANDERSON: All right. And what was the
6 title of the position that you held there?

7 MS. TANG: I was -- when I left the job or when
8 I was starting it?

9 JUDGE ANDERSON: When you left.

10 MS. TANG: When I left the job I was a finance
11 and leasing consultant.

12 JUDGE ANDERSON: All right. I'm just taking a
13 couple of notes. All right. At the time that your job
14 ended what was your rate of pay?

15 MS. TANG: I was making around between 140 to
16 160,000 a year, so it was ranging around 12,000 a month.

17 JUDGE ANDERSON: And was that a salary, was it a
18 combination of salary and commission, how did that work?

19 MS. TANG: Commissions.

20 JUDGE ANDERSON: Was it all commission based?

21 MS. TANG: Yes, based on commission, that's
22 correct.

23 JUDGE ANDERSON: Tell me what was the
24 commission, was it a certain percentage of sales?

25 MS. TANG: Yes, the percentage of sales and

12

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 finance and leasing consultant and then after that I
2 become -- I get promoted and become a finance director.

3 JUDGE ANDERSON: Okay.

4 MS. TANG: Yeah.

5 JUDGE ANDERSON: Got it. Thank you. Sorry that
6 was unclear.

7 MS. TANG: No, I wasn't sure either. Sorry
8 about that.

9 JUDGE ANDERSON: That's okay. And I'm
10 wondering, was this a union position or a nonunion
11 position?

12 MS. TANG: It's nonunion.

13 JUDGE ANDERSON: Okay. Since your job
14 separation on July 30th, have you gotten another job
15 anywhere?

16 MS. TANG: No, I have not. I've been looking
17 for --

18 JUDGE ANDERSON: Okay. Tell me a little bit
19 about what you've been doing to look for work, what kind
20 of places have you been going to, what have you been
21 doing?

22 MS. TANG: I've been looking on-line for -- to
23 go into the finance position at the Boeing Company a
24 lot.

25 JUDGE ANDERSON: Okay.

15

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 MS. TANG: And I've been doing research and I've
2 been applying at least, you know, three, five times a
3 week.

4 JUDGE ANDERSON: Okay.

5 MS. TANG: Yes, since then. And just searching
6 and searching and searching every day I would say.

7 JUDGE ANDERSON: Okay. And are you keeping a
8 job log of those contacts that you're making?

9 MS. TANG: Oh, definitely, I do have them.
10 Because I have to keep track of that, they would, you
11 know, offer me a job I'd know which one I applied for.

12 JUDGE ANDERSON: Okay. Very good. Now, I
13 notice on Exhibit 6 that the first week that they
14 indicate you've been applying for benefits was the week
15 ending on August 28, 2010. Does that sound right, that
16 that was the first week you starting applying for
17 unemployment benefits?

18 MS. TANG: You know, I don't recall that. I
19 think I probably did a month after, you're right,
20 because I wasn't sure -- like I applied before that. I
21 was looking for job before that but I think that's when
22 I started applying for unemployment.

23 JUDGE ANDERSON: Okay.

24 MS. TANG: I didn't realize how long it would
25 take me, like, six months to get a job.

16

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: That's okay.

2 MS. TANG: Let me look.

3 JUDGE ANDERSON: I just want to be clear because
4 I'm going to ask you some questions about your job
5 search and I'm really focusing on that period of time
6 that you applied for benefits and beyond. So from
7 August 28th and beyond, I'm curious if you were doing a
8 job search, and you were making at least three to five
9 contacts per week, correct?

10 MS. TANG: Right, that's correct.

11 JUDGE ANDERSON: Okay. And from that time until
12 now, from August 28th until now, were there any weeks
13 that you were not able to work for any reason?

14 MS. TANG: No.

15 JUDGE ANDERSON: Okay. Were there any weeks in
16 that period of time that you had other responsibilities
17 or obligations that would have prevented you from taking
18 a full-time job?

19 MS. TANG: No.

20 JUDGE ANDERSON: Were you going to school during
21 any of those weeks?

22 MS. TANG: No.

23 JUDGE ANDERSON: And did you have access to
24 transportation to get yourself to and from work?

25 MS. TANG: Yes.

17

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: Okay. Those are all of the
2 questions I have for you with regard to your job search
3 and availability for work. And before we move on to the
4 other issues surrounding the job separation I'm going to
5 ask, Mr. Babcock, if you have any questions of the
6 claimant just about those issues at this time?

7 MR. BABCOCK: Yes, I think I do.

8 JUDGE ANDERSON: Go ahead.

9

10 D I R E C T E X A M I N A T I O N

11

12 BY MR. BABCOCK:

13 Q. One would be, Emily, how long have you worked in car
14 dealerships in the finance department, how many years of
15 experience?

16 A. Are you asking me a question?

17 JUDGE ANDERSON: Yes, he gets to ask you a
18 couple of questions right now, so go ahead and answer.

19 MS. TANG: Okay. I would say objection, it
20 isn't relating to what this is about.

21 JUDGE ANDERSON: Yeah, it is a relevant question
22 how long you've been in the finance field, so go ahead
23 and answer it.

24 MS. TANG: Okay.

25 A. Well, I'm not sure, okay. Let me think. I was in

18

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 deals that should have come back to me no matter what.
2 And as far --

3 JUDGE ANDERSON: I'm going to ask you to
4 explain that a little more for me because I'm a little
5 sketchy on what exactly lead up to this exchange. Can
6 you tell me what happened specifically with regard to
7 this car deal that went awry?

8 MS. TANG: Yeah. On the car deal -- I did the
9 car deal on July 28th. And I was scheduled to -- on
10 that day I was scheduled to do (inaudible) until 8 p.m.
11 but I stayed until 10:00 or 10:30 to work the car deal.
12 The next day the client came in and bought and purchased
13 a car -- I mean, not purchased a car, switched another
14 car because they weren't happy with that car.

15 And I was scheduled to work from 2 to close.
16 And anybody that comes in and switches to another car it
17 comes back to you being the same salesperson, whether
18 they buy the product or not. And you need to get
19 Exhibit No. 9, it states which cars go back to S and I.

20 But my side of this, Nick Wilcox basically took
21 the car deal away from me. And I should get it because
22 I worked until 10:30 the next -- that night. And the
23 next day that car deal should have been mine no matter
24 what, whether they switch car or not or whether they buy
25 products or not.

22

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 And then he makes me -- makes little comments of
2 the issues with me ever since I start working there,
3 racial remarks and all that stuff. And so I talked to
4 Mark and I told Mark before, too, I would start
5 documenting and continue document all the racial remarks
6 that have been going on at work.

7 JUDGE ANDERSON: Well, let me stop you for a
8 second. There's a lot of information that I have just a
9 couple questions about. Nick Wilcox, I'm assuming is
10 another salesperson; is that right?

11 MS. TANG: Yes, he is -- no, he's the sales
12 manager.

13 JUDGE ANDERSON: Okay. And I was under the
14 impression that you were a finance person. Do you sell
15 the cars or do you just do the financial paperwork for
16 it?

17 MS. TANG: I sell -- no, I do the paperwork for
18 the car deal and it's the manager has the authority to,
19 you know, basically get the car deal done as far as the
20 price agreed and stuff. And then we just do the
21 paperwork as far as I do the dollar statement and
22 licensing and stuff like that for the car.

23 JUDGE ANDERSON: Okay. And I'm going to ask
24 some basic questions. I've bought a car before so I've
25 got some of that baseline knowledge. When you talk

23

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 about you sold them the car and did the paperwork for
2 these people on the 28th of July, is it the fact that
3 you were the person selling them the car and doing the
4 paperwork, or was your job to just put through the
5 finance paperwork once they had already purchased the
6 car from a salesperson?

7 MS. TANG: They already purchase the car from
8 the salesperson and then I'm the finance person that
9 does the paperwork.

10 JUDGE ANDERSON: Okay. And who did they
11 purchase the car from, who was the salesperson they
12 dealt with on the 28th?

13 MS. TANG: You know, I can't remember the name.
14 I can look it up but --

15 JUDGE ANDERSON: Okay.

16 MS. TANG: But, anyhow, he purchased a car from
17 a salesperson and then the next day they came in and
18 switched car. So in the finance department we have
19 four, five finance consultants and we take turns, so it
20 was my turn so I took that car deal.

21 JUDGE ANDERSON: Got it.

22 MS. TANG: Basically, right. So the car deal
23 didn't go back to the salespersons, it goes to the next
24 finance person. Basically they took it away from me,
25 somebody else.

24

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: So what you're saying is when
2 these people came back it was the same customer, they
3 were just not satisfied with the car they bought the
4 night before. So they came in and traded it for a
5 different car?

6 MS. TANG: Right.

7 JUDGE ANDERSON: And then that meant there was a
8 whole new set of financial documents that had to be
9 generated?

10 MS. TANG: That's correct.

11 JUDGE ANDERSON: Okay. And you're saying that
12 those should have come to you because you had done the
13 paperwork for these people the day before?

14 MS. TANG: Right. In the finance, what we do is
15 the car -- usually if they come back and they switch
16 cars like that, we just retype the paperwork, just
17 reprint. All we do is just reprint the documents, but
18 the car deal comes back to me. But they're reaching the
19 next finance person.

20 JUDGE ANDERSON: Right. And, now, tell me
21 again, why didn't that come back to you, were you not on
22 the clock when they came in?

23 MS. TANG: They weren't on the clock -- yeah, I
24 wasn't on the clock when they came in. They came in the
25 morning and I was close -- between -- I came in at 2 to

25

In the Matter of: Nguyet E. Tang
Administrative Hearing

1. close. But it does -- for us it's always been if I
2 don't come in in the morning or they -- I wasn't aware
3 or they'll call me to come in. It doesn't matter
4 whoever typed up the paperwork, is just to help out, not
5 to take away from me.

6 JUDGE ANDERSON: Okay. And are you telling me
7 that it was Nick Wilcox that typed up the paperwork then
8 in your stead the next morning because you weren't
9 there?

10 MS. TANG: No, Nick Wilcox take the car deal.
11 He's a sales manager and he asks somebody else to do it
12 and he gave it to that person. But the person that gets
13 that car deal the night before who with me was Kevin
14 Burton. And that's on Exhibit 3, Page -- I'm sorry,
15 Exhibit 2, Page 4.

16 JUDGE ANDERSON: Okay.

17 MS. TANG: When I brought up Kevin's name.
18 Kevin Burton is another sales manager and he was the one
19 that gets the car deal and approve on the price and then
20 told me to do the paperwork.

21 JUDGE ANDERSON: Okay. So Kevin Burton was the
22 person that did the sale the night before. And then are
23 you saying that Nick Wilcox worked with these people the
24 next day when they came back and traded the car?

25 MS. TANG: Right, that's correct. They did not

26

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 trade in the car, they switched car.

2 JUDGE ANDERSON: Switched cars. They just had
3 to redo the paperwork?

4 MS. TANG: Right.

5 JUDGE ANDERSON: I understand. And this car --

6 MS. TANG: Switch car --

7 JUDGE ANDERSON: I'm sorry, go ahead.

8 MS. TANG: Yes, switch car means trade it in
9 with the title of the car and they don't have to trade
10 it in to get a value for the trade. Now, we take the
11 car just completely out and just do the new paperwork
12 with the new VIN number and that's it.

13 JUDGE ANDERSON: Got it. And I don't mean to be
14 mixing terminology because I know it's very particular.
15 So they just switched cars?

16 MS. TANG: Right.

17 JUDGE ANDERSON: Okay. So to be clear then,
18 your problem with the management was that they --
19 somebody okayed this other person to do the paperwork
20 and they got credit for that sale. And I'm assuming, in
21 essence, then, that means you lost your turn in the line
22 if you're taking turns doing the financial documents,
23 you missed out on the sale; is that right?

24 MS. TANG: Right.

25 JUDGE ANDERSON: Okay. Now, who did you speak

27

In the Matter of: Nguyet B. Tang
Administrative Hearing

1 to about this?

2 MS. TANG: I talked to Nick Wilcox and I talked
3 to Kevin Burton and I talked to Mark. And I talked to
4 Mark on the 29th, which is the day after, verbally, and
5 then I think, I don't recall, I texted him. And then I
6 also talked to him verbally on the 30th in the emergency
7 meeting.

8 I came back, I asked him to review and
9 reconsider the case. So -- and that's when I sent him
10 another e-mail. So I verbally talked to Mark twice, I'm
11 sure it was twice, and one time was that e-mail on
12 Exhibit 4, Page 7.

13 JUDGE ANDERSON: Okay. Let me review that
14 really briefly. So what was Mr. Babcock's response to
15 you when you asked him to reconsider and give you credit
16 for this sale?

17 MS. TANG: He said, "No." He said, "No, I
18 wouldn't -- that's not your car deal because the car
19 products wasn't sold on the car." And then I explained
20 to him that the products I sold, it was an extended
21 warranty, because it was important for them to buy that
22 warranty because the car wasn't -- didn't have any
23 warranty. And it was important to them because it,
24 \$3800 worth of the warranty itself. It was just the
25 warranty that cost 3800.

28

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: Correct.

2 MS. TANG: The warranty itself costs \$3,800. So
3 the next day they come in, they switch car, they only
4 spend \$1200 on something else, you know, like Edge and
5 something else, I can't remember, because the other guy
6 type up. And they were saying that he sold it to them
7 but I presented to them across the board of the first
8 day, you know.

9 JUDGE ANDERSON: I do. I understand, okay.
10 Now, with regard to then the meeting that happened on
11 the 29th, was it?

12 MS. TANG: Right.

13 JUDGE ANDERSON: Or the 30th. When did you
14 meet with the emergency meeting back at your work?

15 MS. TANG: The emergency is on the 30th, it's a
16 Friday right.

17 JUDGE ANDERSON: What was the reason for the
18 emergency meeting on July 30th?

19 MS. TANG: It was Mark that wanted all the
20 office managers come in, that's in the meeting right
21 now, and us to know the wrap up of the transitions of
22 the finance meeting and the accounting meeting.

23 JUDGE ANDERSON: Okay. So this emergency
24 meeting did not focus on the issue of you and this other
25 financial person and the deal; is that right, it was not

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In the Matter of: Nguyet E. Tang
Administrative Hearing

1 then related?

2 MS. TANG: No, not at all.

3 JUDGE ANDERSON: But my understanding from
4 reading through some of these e-mails is that there was
5 discussion about whether you would continue working
6 there or not because of your feelings about this
7 transaction; is that right?

8 MS. TANG: Can you please repeat that?

9 JUDGE ANDERSON: Well, it looks to me like there
10 was some back and forth between you and Mr. Babcock
11 about whether or not you were going to continue working
12 at the company. Is that right?

13 MS. TANG: No, I was just talking about -- I
14 just told him about the car deal.

15 JUDGE ANDERSON: Okay. So you were angry about
16 that?

17 MS. TANG: Right. And then he had HR contact
18 me.

19 JUDGE ANDERSON: Okay.

20 MS. TANG: And Nina contacted me. I was going
21 to come into work and, you know, and then Mark e-mailed
22 me back later that day and he said -- I told him that I
23 was sorry that -- on Exhibit 4, Page 7, "I'm sorry,
24 Mark, but I feel -- I feel I'm treated unfairly. As of
25 now I don't feel comfortable coming back to work."

31

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: So what did you mean by that?
2 Tell me what you meant when you told him you didn't feel
3 comfortable coming back to work.

4 MS. TANG: Because I think what he did is -- I
5 think he sided with Nick Wilcox, and Nick has always
6 made racial remarks against me for a long, long time,
7 for the longest time I've been there. And I think he
8 sided with Nick because Nick is the sales manager. And
9 I just felt like, you know, they both worked in a way to
10 affect me, to take a car deal away from me knowing I
11 would be so mad.

12 Because they even told me I was OCD. You know,
13 Mark one time told me I was just an OCD person, and I'm
14 anal. And if it's my car deal I would want it, I don't
15 want to share with anybody. Why would I want to do
16 that, because I worked hard for it, you know, and so I
17 just felt treated unfairly in that way.

18 JUDGE ANDERSON: Well, because you felt cheated
19 did you indicate that you were not then going to come
20 back into work?

21 MS. TANG: No. I -- he only -- and that's when
22 Nina Hunt sent an e-mail, Exhibit 4, Page 6. She asked
23 me on the bottom, she said, "Hi, Emily, I would like to
24 know," that's when Nina Hunt sent me the e-mail. And I
25 said that -- on top of that same page I said, "Hi, Nina,

32

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 I'm not sure how I feel, I still feel yet." And then
2 after that Mark sent me an e-mail on Exhibit 4, Page 4,
3 and that's when he said, "Emily, here's the deal." And
4 he basically -- I felt like he gave me the final straw
5 like, you know, if -- he would terminate my input --
6 process my termination immediately.

7 JUDGE ANDERSON: Okay. So he told you you
8 needed to be at work the next day. This is dated
9 July 30, 2010. Were you scheduled to work on July 31st?
10 That's a Saturday.

11 MS. TANG: I'm sorry?

12 JUDGE ANDERSON: Were you scheduled to work on
13 July 31st? That's a Saturday.

14 MS. TANG: Scheduled on July 31st, I was
15 scheduled in at 12 o'clock. I think 12 or 1. I think
16 it was at 1:00.

17 JUDGE ANDERSON: Okay. Did you go into work on
18 the 31st?

19 MS. TANG: No, I did not because I felt -- I had
20 called -- I called the owner. I called Lexus first
21 before I called the owner because I felt -- yeah, I
22 felt -- I cried. I couldn't be into work, I just
23 couldn't.

24 JUDGE ANDERSON: Okay. Tell me who did you
25 call? You said you called Lexus. Who?

33

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 MS. TANG: I called Gary McGriff, that's on
2 Exhibit 2, Page 3.

3 JUDGE ANDERSON: Okay.

4 MS. TANG: In the second paragraph Gary McGriff
5 is -- he's owned Toyota, from Lexus to Toyota Financial
6 Services.

7 JUDGE ANDERSON: Okay.

8 MS. TANG: He is an instructor that I've known,
9 that guide me through in some way about harassment and
10 sexual harassment and racial remarks that was made to
11 me. And he told me that I needed to protect myself.
12 That was back in November -- August of last year, of
13 2009.

14 JUDGE ANDERSON: Okay.

15 MS. TANG: Yeah. And so he told me over dinner
16 that I need to protect myself with these things by
17 documenting. So I did go in and told Mark, you know, I
18 would document the racial remarks that was made by Nick
19 Wilcox to me, and I would continue, you know, and I did
20 tell Mark that. But that's why I was so -- I couldn't
21 come to work. I mean, my eyes I was crying.

22 I was on the phone and I talked to Mr. O'Brien
23 and he didn't say much. But I don't know if anyone that
24 was crying and being, you know, not themselves would be
25 going to work, you know. I mean --

34

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 JUDGE ANDERSON: Well, did you understand,
2 though, that if you didn't go into work Mr. Babcock made
3 it clear that he thought you would be then choosing to
4 terminate your employment. Was that clear in that
5 e-mail that you got?

6 MS. TANG: Let me just see here just really
7 quick. I'm just going back to that e-mail.

8 JUDGE ANDERSON: Right. It says, "I expect you
9 at work tomorrow ready, willing, and able. If not, I am
10 processing your termination immediately. There is no
11 more debate with this. It's your choice."

12 MS. TANG: Right.

13 JUDGE ANDERSON: So did you realize that if you
14 didn't go back into work the next day you would no
15 longer have a job there?

16 MS. TANG: Yes, I saw that he expects me to be
17 at work tomorrow ready, willing, and able. I wasn't
18 able to do it, you know, that's why. How could I be
19 going to work if I wasn't able to?

20 JUDGE ANDERSON: But did you call anyone at
21 Lexus of Bellevue, anyone there on site and talk to them
22 about not coming in that day?

23 MS. TANG: No, I only talked to Mr. O'Brien on
24 the phone, which he's the owner. He's not on site.

25 JUDGE ANDERSON: Okay. And what did Mr. O'Brien

35

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 say to you?

2 MS. TANG: All he said was said, "I'm sorry that
3 you -- that things don't work out, that you quit or
4 whatever," that's what he said. That's all he said to
5 me on the phone. But I did tell him about the racial
6 remarks that was happening and he and I had a
7 conversation about it.

8 JUDGE ANDERSON: Okay. Let me ask you briefly
9 about those racial remarks. It seems that that's
10 something you've alluded to a couple times, that there
11 were some racial remarks going on from some of your
12 coworkers; is that right?

13 MS. TANG: From Nick Wilcox.

14 JUDGE ANDERSON: Okay. And did you talk to
15 Mr. Babcock about that?

16 MS. TANG: I did talk to Mark about after --
17 sometime in November I did talk to Mark -- in August.
18 I'm sorry, in August of 2009, numerous times I did.
19 And -- but before Mark Babcock there was -- during that
20 time I also talked to other GSMS that were my boss
21 before.

22 Because Mark Babcock was the top GM. He was,
23 you know, overseeing the whole store so I don't go to
24 him and tell him about little things.

25 JUDGE ANDERSON: You had gone to some other

36

In the Matter of: Nguyet B. Tang
Administrative Hearing

1 managers?

2 MS. TANG: Yeah. On Exhibit 2, Page 3, in the
3 second paragraph, you see the middle paragraph it says,
4 "Gary McGriff." And then I also went down to say that
5 Gary McGriff comes to (inaudible) Lexus and then I
6 also -- prior to that report, I also report to other
7 GSMS at the time. So I went to Jim Lithgow and Pedro
8 DeCarvalho about those remarks, I did. And I did, I did
9 go to them. And then Mark Babcock, I start talking to
10 him back in August of 2009. That was the first time I
11 ever talked to him about it.

12 JUDGE ANDERSON: Okay. Was this something that
13 you continued to pursue or was November of 2009 kind of
14 the last time you had any discussions with your managers
15 about this?

16 MS. TANG: No, I did talk to Mark about this in
17 January because Mark -- I told Mark -- because Mark
18 himself made a racial remark about somebody else that he
19 wouldn't let me hire because he was black. So I -- but
20 I did go to Mark anyways and I told him, I said, "I will
21 continue to document, you know, these racial remarks,"
22 and I did tell him the latest one I had was sometime at
23 the end of May, May of 2010.

24 Because Nick made racial remarks against
25 customer, an Asian customer also, so I did tell Mark to

37

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 be aware of that. And I did tell the owner's daughter,
2 which is Chantel O'Brien, about it also because I get an
3 e-mail. And I also heard Nick say to a customer, I
4 overheard him when I was taking the fax machine over
5 outside the office.

6 JUDGE ANDERSON: Okay. And you said that the
7 most recent was probably May of 2010?

8 MS. TANG: Not -- Your Honor, it's not probably
9 but it is -- it was the end of May, May 26th, 24th or
10 something, the end of May.

11 JUDGE ANDERSON: Okay.

12 MS. TANG: I recall, yeah.

13 JUDGE ANDERSON: Okay. And did any of your
14 managers ever say what they were going to do about that,
15 investigate it, talk to Mr. Wilcox? Did they tell you
16 to go follow up with Human Resources, anything like
17 that?

18 MS. TANG: No, they did not tell me to go to
19 Human Resources. Jim Lithgow and Pedro sat him down a
20 few times, I think. I think a lot of times Pedro sat
21 him down when Pedro was there. It was sometime back
22 in, I'm not sure, January.

23 JUDGE ANDERSON: Okay. All right. Well, I
24 think I have a pretty fair understanding of sort of the
25 whole scenario going on with your work environment, and

38

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 I don't have any other questions for you.

2 But is there anything else, Ms. Tang, that you
3 want to tell me that you think is relevant that I should
4 consider before I move on to see if Mr. Babcock has any
5 questions for you?

6 MS. TANG: I don't have questions but I have
7 some statements.

8 JUDGE ANDERSON: Yeah, please do give me your
9 statements.

10 MS. TANG: Yeah. My performance was -- at Lexus
11 of Bellevue I always hit the quota and it was Lexus of
12 Bellevue record history, and I was there since 1991.
13 We -- my department made the most money. And when I'd
14 call in sick -- there was only two times I called in
15 sick for over more than four years being sick being
16 there.

17 Because when I was overdosed, my doctors, my
18 diabetes medications I was overdosed on June 26 -- June
19 29th and 30th and I couldn't go to work. And Mark was
20 aware of that, I told Mark that. And I'd never been
21 written up before, all I got was a pat on the back,
22 "Good job, Emily." And I've never -- I haven't any
23 negative besides the fact that Mark one time made a
24 comment that I was an OCD, "You're such an OCD," that's
25 it, you know. But I took it as a complement not as a

39

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 relevant to the merits of her case quite frankly.

2 MR. BABCOCK: Okay.

3 JUDGE ANDERSON: Does that, hopefully, give you
4 a little more clarification?

5 MR. BABCOCK: It does. Unfortunately, I guess
6 it's going to cause me to have to ask, I think, quite a
7 few questions. So, you know, if I'm off base or
8 something, just let me know. It's not intended.

9 R E D I R E C T E X A M I N A T I O N

10

11 BY MR. BABCOCK:

12 Q. So I guess just to make sure I'm clear, Emily, at this
13 point, is -- there again at this point you're saying
14 that you left here because I created some kind of a work
15 environment that you could not tolerate is the gist of
16 what I'm understanding. Is that correct?

17 A. I think that's -- I couldn't tolerate the facts that
18 what was going on, and I don't think you stopped Nick.
19 You know, Mark, there was a lot of stuff that I told you
20 and I told you from a long time ago and that's the
21 problem. Because I cried for the longest time, for
22 months thinking how Asian people are stupid, Asian
23 people don't pay taxes.

24 And the last comment, Mark, I made to you sometime in
25 June, there was a customer from --

42

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 Is -- that was the final -- that was -- the reason
2 you did that was because of your disagreement with my
3 decision regarding this car deal; is that correct?

4 A. That was -- the car deal was related to, I think,
5 towards -- the tolerance I couldn't hold it in there,
6 and then I think it all adds up together. That's when
7 it came -- and your letter to me that was -- you would
8 process me -- process my termination immediately if I
9 wasn't -- you were expecting me to be ready and willing
10 and able.

11 I was not able. I was crying. My eyes were like
12 (inaudible) eyes, I could not come to work. So I could
13 not be at work if I cried and not happy, the clients
14 will be seeing me as unhappy Emily. That would not be
15 the same, you know.

16 Q. Yeah. If I recall I think my text message was something
17 to the effect I expected you to be to work and I
18 expected you to be ready, willing, and able. I don't
19 think I was giving you an option there.

20 And the reason you felt that you were not able is
21 because you disagreed with me regarding my decision
22 regarding the car deal?

23 A. I disagreed with that, along -- like I said, along with
24 the fact that you sided with Nick and you did not want
25 to open up and think what we had from the meeting, that

44

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 car deal that Nick decided that wasn't his car deal, it
2 was supposed to be another sales manager car deal. And
3 I think it was a hostile environment for me, that's why
4 I moved -- I resigned my position to move to the back
5 and stay away from Nick, because my office was right in
6 front of him, one of reasons why I did that.

7 JUDGE ANDERSON: Okay.

8 MS. TANG: And I just wanted it to be peaceful,
9 work in the back and not to deal with anybody, make the
10 money. But that wasn't happening after because --
11 because I couldn't hold the fact that, you know, talking
12 about Asian people and all that all the time to me to
13 the point I hated Asian people, I hated it. I cried.
14 And my relatives sent me -- just so you know -- sent a
15 prescription with a psychology, that's what he gave me,
16 he wouldn't give me any medication for my headaches.

17 JUDGE ANDERSON: His prescription to you was
18 what, ma'am?

19 MS. TANG: Psychology. He said my prescription
20 to you is psychology.

21 JUDGE ANDERSON: What's that --

22 MS. TANG: To go and talk it out.

23 JUDGE ANDERSON: Okay, I understand.

24 MS. TANG: So I don't (inaudible).

25 JUDGE ANDERSON: Okay.

66

In the Matter of: Nguyet E. Tang
Administrative Hearing

1 statement for me, too, please.

2 MR. BABCOCK: Yes. We disagree with Emily's
3 claims, obviously. If there were any truth to, you
4 know, a hostile work environment or, you know, even that
5 she disagrees with our policy on, you know, one car
6 deal, my question would be why has she not applied for a
7 finance job at any other car dealerships?

8 It's our opinion that she planned on leaving and
9 was working towards that many weeks before she
10 actually -- and then she has a reason to want to collect
11 these benefits. And in this marketplace she could go
12 work yet this afternoon in an S and I position anywhere
13 in this city. And, you know, so our position is that
14 this is fabricated and we think the benefits should be
15 denied.

16 JUDGE ANDERSON: All right. Thank you very
17 much, Mr. Babcock. I am very mindful of the two very
18 diverse positions on this case and I will be spending
19 significant time reviewing my notes that I was taking
20 during the hearing as well as reviewing all the
21 evidence. And I will go back and read the statutes that
22 I was citing to earlier. I'm going to be issuing a
23 written opinion and this opinion will go out sometime
24 early next week.

25 Along with my written opinion, you will both

68

Since you could have prevented the separation by reporting to work as directed, and you made it clear to your employer you would not return to work, you are the moving party in your separation and are considered to have voluntarily quit.

It has been shown that you quit your job because you were dissatisfied with your manager's decision about a car deal. You are considered to have quit for a personal reason that does not constitute good cause.

DECISION: Based on the information provided, you did not have good cause to quit work.

RESULT: Benefits are denied beginning 07/25/2010. This denial will continue for at least seven weeks and until you go back to work and earn seven times your weekly benefit amount in work that is covered by unemployment insurance.

Employer: State law says you may be eligible for relief of benefit charges to your experience rating account if the quit was not attributable to you. If you returned the Notice to Employer—Claimant's Separation Statement (EMS 5361) and the job separation was not attributable to you, you will receive a written decision that grants you relief of charges. (This does not apply if you are taxable local government employer or you reimburse the trust fund for benefit charges.) See RCW 50.29.021.

If you did not return the EMS 5361, your experience rating account will be charged unless (a) you requested relief of benefit charges from the first Notice to Base Year Employer (EMS 166) within 30 days of the date it was mailed, and (b) the department grants your request for relief of charges.

YOUR RIGHT TO APPEAL:

If you disagree with this decision, you have the right to appeal. An appeal is a written statement that you disagree with this decision. Your appeal must be received or postmarked by 10/15/2010. An appeal is a request for a hearing with an Administrative Law Judge (ALJ) from the Office of Administrative Hearings (OAH). If you miss the deadline to appeal, tell us why the appeal is late. The ALJ will decide if you have "good cause" for a late appeal. You can fax or mail your written appeal to the fax number or return address listed at the beginning of this decision. We will not accept appeals by e-mail or telephone.

09/15/2010

3 of 5

Archived Copy

81 of 132

Exhibit 3 Page 3

An appeal must include:

- Your name
- Your social security number (claimant's)
- Your current address
- Your telephone number
- The decision you want to appeal
- The reason(s) you want to appeal
- Your signature (we will return it if not signed)

If you or one of your witnesses does not speak English, tell us you need an interpreter and the language that you or your witness speaks.

OAH will mail you, and any other interested party on the decision, a Notice of Hearing with the date and time of the hearing, and a copy of the case file. Most hearings are held by telephone.

For additional information about the appeal process, please see "How Can I Appeal?" in the UI Claims Kit at www.appeal.go2ui.com or call your Claims TeleCenter.

CLAIMANT: You must continue to file your weekly claims during the appeal process if you are not working full-time. If you win your appeal, you will be paid for the weeks you claimed.

SU DERECHO DE APELACION:

Si no está de acuerdo con esta decisión, tiene el derecho de apelar. La apelación es una declaración por escrito diciendo que no esta de acuerdo con esta decisión y quiere pedir una audiencia con un juez administrativo de la Oficina de Audiencias Administrativas (OAH). Su apelación deberá recibirse o tener matasellos fechado, en o antes de: 10/15/2010, envíela ya sea por fax o por correo, vea el número de fax o domicilio al principio de esta decisión. No aceptamos apelaciones por correo electrónico ni por teléfono.

Si se le pasa la fecha límite para registrar su apelación, explique porqué su apelación es tardía. El juez decidirá si tiene "una buena razón" para apelación tardía.

09/15/2010

4 of 5

Archived Copy

82 of 132

Exhibit 3 Page 4

La apelación deberá incluir:

- Su nombre
- El número de seguro social del reclamante
- Su domicilio postal actual
- Su número de teléfono
- La decisión que quiere apelar
- Las razones por lo que no está de acuerdo con la decisión
- Su firma (se devuelven si no tienen firma)
- La razón que tiene para apelar a destiempo, si es que la apelación es tardía.

Si para la audiencia en inglés usted o uno de sus testigos necesita Intérprete, pídalo en el mismo escrito y diga qué idioma se necesita.

OAH enviará a todas las partes una Notificación para Audiencia con la fecha y hora de la audiencia y una copia del expediente. La mayoría de las audiencias son por teléfono.

Para mayor información acerca del proceso de apelación, vea la sección "Cómo puedo apelar una decisión?" en el Manual para Reclamos por Desempleo que le enviamos, o por Internet en www.appeal-sp.go2ui.com o llame al TeleCentro.

RECLAMANTE: Si no esta trabajando de tiempo completo, continúe registrando su reclamo semanal. Si gana la apelación, solo pagaremos las semanas que haya registrado un reclamo y reunido cualquier otro requisito.

LEXUS OF BELLEVUE
101 116TH AVE SE
Bellevue WA 98004-6408

09/15/2010

5 of 5

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83 of 132

Exhibit 3 Page 5

[REDACTED] Kirsten

From: EMILY TANG [emilytang75@yahoo.com]
Posted At: Monday, September 13, 2010 5:48 PM
Conversation: Re: Emily Nguyet Tang
Posted To: Inbox
Subject: Fw: Re: Emily Nguyet Tang

Hello Kirsten,

(Nguyet) Emily Tang
206-229-8882

-----Original Message-----

From: mbabcock@lexusofbellevue.com
Sent: Friday, July 30, 2010 5:24pm
To: etang@lexusofbellevue.com, "Michael O'Brien" <ob@obauto.com>
Subject: Re:

Emily, here's the deal. I understand your position but I disagree and have told you my final decision. I am long suffering in allowing you to blow out and abandon your shift today. Your co workers are picking up the slack yet again for you. I expect you at work tomorrow ready willing and able. If not I am processing your termination immediately. There is no more debate over this. Its your choice.
Sent from my Verizon Wireless BlackBerry

-----Original Message-----

From: "Emily" <etang@lexusofbellevue.com>
Date: Fri, 30 Jul 2010 20:53:59
To: Lexus Mark <mbabcock@lexusofbellevue.com>
Reply-To: etang@lexusofbellevue.com
Subject: Re:

I'm sorry Mark but I feel I'm treated unfairly. As of now, I don't feel comfortable coming back to work.

-----Original Message-----

From: Lexus Mark
To: etang@lexusofbellevue.com
ReplyTo: Lexus Mark
Subject: Re:
Sent: Jul 30, 2010 1:40 PM

Of course it would count against him.

-----Original Message-----

From: Emily
To: Lexus Mark
ReplyTo: etang@lexusofbellevue.com
Subject: Re:
Sent: Jul 30, 2010 1:22 PM

2. During the weeks at issue the claimant was willing and able to accept any offer of suitable work and sought work as directed by the Department.
3. On July 28, 2010, the claimant met with customers and prepared their finance documents for a car sale. This took several hours, and the claimant worked two hours past her scheduled end time to complete the sale.
4. The next morning, the customers came back into the dealership and wanted to "switch cars," which the dealership allowed customers to do if they weren't satisfied with their purchase within a few days.
5. The claimant was not yet on shift, as she did not start until 2:00 PM in the afternoon. Since the claimant was not there, the sales manager, Nick Wilcox had another finance consultant work up the papers for the customers on the "switched" car.
6. This transaction resulted in the claimant losing out on the commission for the sale she had been a part of the night before. The claimant was very upset by this and spoke to the General Manager, Mark Babcock, about this transaction.
7. Mr. Babcock stood behind the decision of his sales manager to allow another finance consultant write up the switched transaction and receive commission on that transaction.
8. On July 29, 2010, the claimant came in to work for a meeting, not related to this "switched car" transaction. At that time, she again spoke to her General Manager about the how unhappy she was with how the transaction was handled.
9. The claimant continued to be so upset by this transaction that she did not come into work at all on July 30. The claimant did not call anyone on site to tell them she wasn't coming in.
10. On Friday, July 30, 2010, the general manager, Mr. Babcock, sent the claimant an e-mail telling her that her co-workers were having to pick up her slack for her not coming in that day, and that the manager expected the claimant at work the next day ready willing and able to work, or he would process her termination. The email further stated it was the claimant's choice. Exhibit 4, page 4.
11. Again on July 31, 2010, the claimant did not come into work. The claimant knew if she did not come in, she would no longer have a job there. She made the voluntary choice to leave her job based on her actions.
12. After the fact, in responses filed with the Employment Security Department, the claimant indicates that she felt that she suffered some discrimination based on her race or some "whistle-blower" type retaliation, but the undersigned finds no persuasive evidence of this.

(ii) due to illness or disability;

(iii) to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area if the claimant remained employed as long as was reasonable prior to the move;

(iv) to protect self or family from domestic violence or stalking;

(v) reduction in pay by twenty-five percent or more;

(vi) reduction in hours by twenty-five percent or more;

(vii) worksite change that increases commute distance or difficulty and after the change, the commute was greater than is customary for workers in the individual(s) job classification and labor market;

(viii) unsafe worksite conditions;

(ix) illegal activities in the worksite;

(x) change in work duties that violates religious convictions or sincere moral beliefs;

(xi) to enter apprenticeship program.

6. The claimant alleged, but the undersigned did not find, that there was some sort of discrimination going on in the work place. The burden of establishing good cause for a voluntary quit is on the claimant. Good cause must be established by a preponderance of the evidence. A preponderance of the evidence is that evidence which produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915). In this case, the preponderance of the evidence points to the fact that the claimant quit her job because she was angry over the way the July 28 and 29, 2010 switched car transaction was handled. The claimant's actions show that this was the precipitating factor which led to her not showing up for work, even after receiving notice from her manager that if she did not show up for work on July 31, 2010, he would process her termination. The choice was the claimant's. Had she come to work on the 31st, she would still have had a job. The actions on the claimant's part establish that she quit due to dissatisfaction with certain aspects of her job, namely how the transaction was handled. This does not amount to good cause as defined by RCW 50.20.050(2). As such, the undersigned concludes that the claimant is not eligible for benefits based on her voluntarily quitting her job without statutory good cause.

7. RCW 50.20.010(1)(c) requires each claimant to be able to, available for, and actively

seeking work. The claimant was able to, available for, and actively seeking work during the weeks at issue and is therefore not subject to denial under the above-cited statute and related laws and regulations as it pertains to that issue.

Now therefore it is ORDERED:

The Decision of the Employment Security Department under appeal is AFFIRMED.

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).

The claimant has not established good cause for quitting.

Benefits are denied pursuant to RCW 50.20.050(2)(a) for the period beginning July 25, 2010 and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in covered employment and earned wages in that employment equal to seven times his or her weekly benefit amount. ("Covered employment" means work that an employer is required to report to the Employment Security Department and which could be used to establish a claim for unemployment benefits.)

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 and Mailed on November 08, 2010 at Spokane, Washington.



Rachelle E. Anderson
Administrative Law Judge
Office of Administrative Hearings
221 N. Wall Street, Suite 540
Spokane, WA 99201-0826

Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein. 2010/11/08

INITIAL ORDER - 5

201036091.REA

ste formulario se debe completar
en Inglés. Favor de usar letra de
impresita o letra de molde.
In the Matter of:
(Con respecto al asunto de:)

State of Washington
EMPLOYMENT SECURITY DEPARTMENT
P.O. Box 9555
Olympia, Washington 98507-9555
PETITION FOR REVIEW
(Petición de Revisión)

EMS 5356 (Rev. 05/95)

Original & First 3 Copies to
Agency Record Center
4th Copy to Petitioner
5th Copy to UIO File

CLAIMANT (RECLAMANTE):

Nugyet T. Tang
4601 NE 2nd Street
Renton, WA 98059-5249

ID#: [REDACTED]
BYE: 8/20/2011
DOCKET NO. 04-2010-36091

EMPLOYER (PATRÓN):

Lexus of Bellevue
Mark Babcock, GM
101 - 116th Ave. SE
Bellevue, WA 98004-6408

For Commissioner's Review Office Use Only
Review No.: 2010-8105
Acknowledgment Date: 12/3/2010 (ja)

OTHER PARTIES (OTRO PARTIDO DE INTERES):

OTHER PARTIES (OTRO PARTIDO DE INTERES):

TO THE COMMISSIONER OF THE EMPLOYMENT SECURITY DEPARTMENT:
(PARA EL COMISIONADO DEL DEPARTAMENTO DE SEGURIDAD EN EL EMPLEO)

The undersigned hereby petitions the Commissioner for a review of a Decision of the Office of Administrative Hearings issued on: 11/8/2010. (La persona con firma debajo por la presente hace esta petición la Comisionado para que revise la decisión que fue producida por la Oficina Administrativa de Audiencias con fecha de:) 11/8/2010.

This request for review is made for the following reasons: (Se pide esta revisión por las razones siguientes:)

[NOTE: If the petition is filed untimely, please state reasons therefor; if the petition is from an Office of Administrative Hearings Decision which dismissed the appeal for nonappearance, please state reasons for failure to appear at the time and place scheduled for the hearing.] Any written argument in support of this Petition for Review must be attached and filed herewith or it will not be considered. The Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. (NOTA: Si esta petición se hace a fuera del tiempo permitido, sírvase dar las razones. Si esta petición es de una decisión de la Oficina Administrativa de Audiencias que despidió la apelación porque usted no apareció, sírvase dar las razones porque Ud. no apareció en la fecha prevista para la audiencia.) Todo argumento por escrito en apoyo a esta Petición de Revisión se debe apegar y presentarse adjunto con esto para ser considerada. La Petición para Revisión, incluyendo el acompañamiento, no debe exceder cinco (5) páginas. Todas, páginas en exceso de cinco (5) no serán consideradas y se regresarán la peticionario.]

-SEE ATTACHED DOCUMENTATION-

For Department Use Only	
Postmark date or date delivered:	12/1/2010
770	King County
(UIO/DTO No.)	(UIO/DTO Name)
If Tax Appeal: ES Reference No.	
Processed by: ja	On December 3, 2010
(Agency Representative)	(Process Date)

Isi Nugyet T. Tang
Signature of Petitioner (Firma de Peticionario)
Co. Name, if any:
Interested as: Claimant
(Intersado como):

IMPORTANT: Please See Reverse or Attachment For Further Instructions and Information.
(**IMPORTANTE: Sírvase ver al reverso o adjuntura para más instrucciones y información.**)

—NOTICE TO INTERESTED PARTIES—

This will acknowledge receipt of your Petition for Review. A copy of the Petition for Review and any written statement, brief or argument is being mailed to the nonpetitioning party and his or her designated attorney or representative for reply, if they desire.

There is no hearing before the Commissioner's Review Office. The record of the proceeding, the written statement, brief or argument filed by the petitioning party and attached to the Petition for Review at the time of filing and any reply by the nonpetitioning party will be the only material, aside from applicable law, regulations and precedent, considered in the review of this matter.

Replies to the Petition for Review by the nonpetitioning party must be mailed or delivered to and received by the Commissioner's Review Office, P.O. Box 9046, Olympia, WA 98507-9046, within fifteen (15) days of the date of acknowledgment that appears on the face of this form. The reply to the Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the nonpetitioning party. Such replies must cite the assigned Review Number and contain a statement that a copy of the

—SPECIAL NOTICE TO CLAIMANT—

If you wish to protect your right to benefits while the Petition for Review is pending, you must continue to file claims with your Unemployment Insurance Office, as usual, for each week in which you are unemployed. Even though a Decision of the Commissioner may ultimately find you eligible for benefits, none will be paid for any week for which you have not filed

—AVISO A LAS PARTES INTERESADAS—

Esta acusará recibo de su Petición para Revisión (Petition for Review). Una copia de la Petición para Revisión y cualquier declaración escrita, expediente o sumario se le mandará por correo a la parte que no es el peticionario y al abogado de ella nombrado para el caso o el representante para que respondan, si lo desean.

No hay audiencia ante la Oficina del Oficial de Revisión (Commissioner's Review Office). El informe del procedimiento, la declaración escrita, el sumario o el argumento registrado por el solicitante (peticionario) que acompaña a la Petición para Revisión en el momento del registro y cualquier respuesta de la persona que no es el peticionario será el único material, excepto por la ley pertinente, regulaciones y precedente, considerado en la revisión de este asunto.

Respuestas a la Petición para Revisión por la parte que no es el peticionario deben ser enviadas por correo o entregadas y recibidas por el Commissioner's Review Office (Oficina del Oficial de Revisión), P.O. Box 9046, Olympia, Washington 98507-9046, dentro de los quince (15) días desde la fecha en que se acusa recibo y la cual aparece en el frente de este formulario. La respuesta a la Petición para Revisión, incluyendo el acompañamiento, no debe exceder cinco (5) páginas. Todas, páginas en exceso de cinco (5) no se considerarán y se devolverán al partido que no hace la petición.

—AVISO ESPECIAL AL DEMANDANTE—

Si Ud. quiere proteger sus derechos a beneficios mientras la Petición para Revisión está pendiente, Ud. debe continuar registrando sus reclamaciones con la Oficina de Asegurancia de Empleo, como de costumbre, por cada semana que Ud. está desempleado. Aún cuando la Decisión del Oficial de Revisión oída finalmente fallar su elegibilidad para los beneficios, ningún beneficio será pagado por cualquiera de las semanas en las cuales Ud. no registró una reclamación o no

material submitted has been mailed to the petitioning party or his or her designated attorney or representative and any other designated interested party or his or her attorney or representative. The names and addresses of those parties and their designated attorneys or representatives are set forth on the face of this form or as a separate attachment to this form.

A request for extension of time for reply will be granted only upon a showing that inability to submit the reply within the fifteen-day period was beyond the reasonable control of the party seeking the extension. Replies not submitted in accordance with these instructions will be disregarded.

The petitioning and nonpetitioning parties and their attorneys or representatives must keep the Commissioner's Review Office informed of their current mailing addresses during the review of this matter. When the review has been completed, a written Decision of Commissioner will be mailed to the parties and/or their attorneys or representatives at the most recent mailing address provided.

a claim or reported to your Unemployment Insurance Office in accordance with the claim and reporting requirements.

Should you desire further information, you may contact the Commissioner's Review Office at the address given above or any Unemployment Insurance Office or District Tax Office.

Tales respuestas deben mencionar el Número de Revisión asignado y contener una declaración que una copia del material presentado ha sido enviado por correo a la parte que lo solicita o su abogado nominado o el representante y cualquier otra parte interesada designado o a su abogado o representante. Los nombres y direcciones de esas partes y sus abogados o representantes asignados se establecen en la parte del frente de este formulario o como inclusiones a este formulario.

Una petición para la extensión del plazo para contestar será concedida solamente si se demuestra que la inhabilidad para presentar la respuesta dentro del período de quince (15) días estuvo fuera del control razonable de la parte que solicitaba la extensión. La respuestas no presentadas de acuerdo con estas instrucciones serán ignoradas.

La parte peticionaria y la parte no peticionaria y sus abogados o representantes deben mantener informada a la Oficina del Oficial de Revisión de sus direcciones postales actuales durante la revisión de este asunto. Cuando la Revisión ha sido completada, una Decisión por escrito del Oficial de Revisión será enviada por correo a las partes y/o abogados o representantes a la dirección postal más reciente que se ha proporcionado.

se presentó a la Oficina de Asegurancia de Desempleo de acuerdo con los requisitos de la reclamación y del deber de presentarse al Centro.

Si necesita más información póngase en contacto con la Oficina del Oficial de Revisión (Commissioner's Review Office) a la dirección enumerada arriba o con cualquier Oficina de Asegurancia de Desempleo, o La Oficina de Impuestos del Distrito.

November 17th, 2010

RECEIVED

DEC 02 2010

Records Center

Agency Records Center
Employment Security Department
PO Box 9046
Olympia, WA 98507-9046

RECEIVED
DEC 03 2010
Employment Security Dept.
Commissioner's Review Office

I, Nguyet Emily Tang, (Docket No: 04-2010-36091), am writing a request for a Petition for Review due to the result of appeal phone hearing made by Judge Rachelle E. Anderson. I still strongly believe that I am entitled to unemployment benefits while actively looking for other employment opportunities. I did not voluntarily quit my job. I was wrongfully terminated by the GM, Mark Babcock who retaliated against me for reporting racial discrimination, other unethical goings on in the workplace and especially being a whistleblower (please refer to Attachment 1 - the Discharge Questionnaire 8/28/2010). Had I given Kirsten from the Employment Security Department all the facts of what went on in my workplace when she called and interviewed me, I believe the initial decision on my unemployment benefits would have been determined and considered differently. I recalled my phone conversation with her was recorded; she insisted that I told her what was going on so that she could record and everything would be revealed to the employer. I told her that I was advised to not say anything to anyone about being a whistleblower while looking for a job because other employers may refuse of hiring me; and I did ask her to have the racial remarks left out and not be on my record.

I found Finding the Facts (1) from Judge Anderson were inaccurate. I was working for Lexus of Bellevue from June 8th, 2006 to July 30th, 2010 (not 6/8/2010-7/30/2010) and during these 4 years of employment I was making between \$140,000 to \$160,000 per year (not \$140-\$160 per transaction). Finding the Facts (5), Switch cars - please see Attachment 2, our meeting minute on February 5th, 2009 even stated (Switch Cars - goes back to the same F&I and Unwinds - same) which I strongly believe they had no reasons to take the car deal away from me except for they retaliated against me due to being a whistle blower. I always overachieved the quotas given and had a perfect attendance and perfect work ethics. I never missed work for any reasons during the 4 years of employment except for June 29th and June 30th, 2010, I did tell Mark that my diabetic health conditions got worse; there were at least 4 phone records from my doctors and nurses instructing me on the Glyburide medications.

On several occasions since August 2009 I told the GM, Mark Babcock, that I would start and continue documenting racial remarks Nick Wilcox made to me and Mark Babcock himself also made a racial comment to me about someone else in November 2009. All Mark did was to stare at me and asked me where I would keep what I document. I also made complaints about discrimination (to include racial and sexual discrimination) but my employer did nothing to

correct the unlawful treatment that I was being subjected to -- instead they retaliated against me and made my working conditions so horrible that I became extremely stressed at work and it was difficult for me to go to report to work especially when they took the car deal away from me and gave it to someone else. It was a very threatening and hostile work environment I was working in. Gary McGriff, from Toyota Financial Services should have records of some of these conversations about harassment that I was being subjected to. Gary McGriff once told me that I needed to protect myself and that was by letting the GM know that I would document any racial or sexual harassment made by anyone in the workplace. Prior to that, I also reported to our GSM's at the time, Jim Lithgow and Pedro DeCarvalho because I had been being racially discriminated against and harassed for 3.5 years of my 4 years employment at Lexus of Bellevue. I even brought it up to the owner's daughter's attention, Chantal O'Brien numerous times in regards to the racial remarks. The last racial remarks I got from Nick Wilcox was May 25th and around June 11th, 2010. I didn't want to jeopardize Jim's and Gary's current employment by subpoenaing them for the purpose of my phone hearing with Judge Anderson.

The first 30 days after losing my job, I was still so dramatized of what had happened; even my neurologist, Dr. Collins said that his prescription to me was a psychologist and not any medications due to the severe headache I continued having and he advised me that I should have ignored all the racial remarks. After being discriminated against for 3 and a half years by Nick Wilcox, I don't think anyone could take it anymore. What would you do if one made these types of statements towards you repeatedly for over 3 years?

1. Constantly mimicking my Asian accent
2. Asian people are stupid
3. The only way Asian people can afford a nice car is they pile 5, 7, 10 people in a small house
4. Asian people don't pay taxes
5. Even my dog, Pixie, don't like Asian people
6. Telling two Asian customers (Mr. and Mrs. Cao) to go back to Cambodia and get their complimentary bottled water from the river (a racial harassment report has been filed with Lexus of North America case # 425-562-1245)

As for the GM, Mark Babcock, he told me that I couldn't hire a person because he was Black. And how the conversation went is below,

"Patrick is not a good fit; there hasn't been a black person that could survive in this store for Cash. I don't think he can make it here!" -- Mark said.

I was really shocked and said, "What do you mean? How about Kev? Mark, Patrick is way overqualified, he grossed over \$220K last year shown on his pay stub. If he did that much at a domestic store, then I assume he would make at least \$150K per year here which would make LOB at least \$750K. He can speak French, college degree, and with his personality (very mellow) he can put people at ease. All I have to train him is LCPO coverage and a few things."

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Employment Security Dept.
Commissioner's Review Office

"Nay, I still don't think it's a good idea" - he said.

I told him that it was wrong for him to say such things and I would document it. He again asked me where I would document it and I replied that I didn't have to tell him. When I think or write about these statements, my tears are dripping but I know I am just more sad than angry. I am sad because this is still happening in the 21st century and that I let myself put up with this for a long time. Who wouldn't want to be working for a reputable brand such as Lexus and Lexus of Bellevue is also known as a second largest dealership in the country? Had I not said anything to Mark since August 2009 and not insisted him to let me hire Patrick Kavulu, my job would not have been in jeopardy and that I would still be working there.

Some of the witnesses

Gary McGriff – 303-956-2878

Jim Lithgow – 253-514-0068

Mr. and Mrs. Cao – 425-260-7281

I hope this petition explains why I couldn't jeopardize my other employment opportunities and that reasons why I couldn't tell Kirsten every single detail of what went on at the workplace. In addition, this written letter also requests to have my name, SSN#, and address removed from the public records. Thank you for your time and I look forward to hearing from you soon.

Sincerely,



Emily Nguyet Tang
Phone – 206-229-8882
Fax – 206-260-1333
emilytang75@yahoo.com

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DEC 09 2010
Employment Security Dept.
Commissioner's Review Office

**COMMISSIONER'S
DECISION**



Employment Security Department
WASHINGTON STATE

P.O. Box 9046 • Olympia WA 98507-9046

December 30, 2010

Nguyet T. Tang
4601 NE 2nd Street
Renton, WA 98059-5249

Review No. 2010-6105

If you are a party aggrieved by the attached Commissioner's decision/order, you may file a petition for reconsideration with the Commissioner's Review Office and/or file a judicial appeal with the superior court. Reconsideration and judicial appeal information is set forth at the end of the Commissioner's decision/order.

If you file a judicial appeal with the superior court, the Employment Security Department will be the respondent and the Office of the Attorney General will represent the Employment Security Department. Accordingly it would be improper for the Employment Security Department or the Office of the Attorney General to advise or assist you in the filing of a judicial appeal with the superior court. If you disagree with the Commissioner's decision/order, it is your responsibility to file a judicial appeal directly with the superior court and serve a copy of that judicial appeal on the Commissioner of the Employment Security Department and the Office of the Attorney General or to retain an attorney to do so on your behalf.

There is information regarding filing a judicial appeal available on the internet through Washington Law Help at www.washingtonlawhelp.org. Washington Law Help is provided as a public service by the Northwest Justice Project in collaboration with other legal aid providers in the Alliance for Equal Justice and Washington courts. Also, attorney referral services are listed in the yellow pages of local telephone directories. While the Employment Security Department cannot endorse or warrant the accuracy or reliability of the website or referral services described above, the information may be useful to you.

Sincerely yours,

Annette Womac
Review Judge
Commissioner's Review Office

AW:ja

cc: Lexus of Bellevue
Mark Babcock, General Manager
101 - 116th Ave. SE
Bellevue, WA 98004-6408

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 December 30, 2010.

S. Alexander

Representative, Commissioner's Review Office,
Employment Security Department

UIO: 770
BYE: 08/20/2011

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

Review No. 2010-6105

In re:

NGUYET T. TANG
SSA No. [REDACTED]

Docket No. 04-2010-36091

DECISION OF COMMISSIONER

On December 1, 2010, NGUYET T. TANG petitioned the Commissioner for review of an Initial Order issued by the Office of Administrative Hearings on November 8, 2010. On December 8, 2010, the employer's reply was received. 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 enters the following.

In her petition for review, the claimant makes additional assertions regarding her work-related circumstances. Certainly, the claimant had the right to present all relevant evidence at the November 5, 2010 hearing. At this point, the claimant's additional assertions are hearsay – subject to neither inquiry nor response from the employer – and cannot be considered as persuasive evidence. Nor can the undersigned contact additional witnesses (whose phone numbers have been provided by the claimant) to discuss the merits of this claim because doing so would violate principles of due process. Rather, as both parties were cautioned via notice of hearing instructions, review is limited to the hearing record.

Upon review of the record, testimony of the parties conflicted on material points: Whether the employer condoned a workplace environment of discrimination and harassment against employees and/or customers of Asian ethnicity; on or about July 29, 2010, whether the claimant was wrongfully denied a commission for the sale of a vehicle, or whether the employer's decision was consistent with established policy and procedure; whether the claimant quit because she was denied the commission; or whether she was discharged. At the least, the parties' perceptions of work-related circumstances differed.

In unemployment benefit appeals, proof beyond reasonable doubt is not required. Rather, the trier of fact must determine what more likely happened. In re Murphy, Empl. Sec. Comm'r Dec.2d 750 (1984). To that end, all the evidence should be considered and weighed in light of total circumstances and logical persuasiveness. Id. In this case, the findings of fact reflect the administrative law judge determined the employer's case was more persuasive than the claimant's version of events. Because there is evidential basis – sworn testimony based on personal knowledge of facts in question provided by the employer's general manager and confirmed by the employer's accounting manager – deference is accorded to the findings of the administrative law judge. Accordingly, the findings will not be disturbed.

Finding No. 1 is adopted but is modified to state instead as follows: The claimant was employed at the interested employer's car dealership in Bellevue from June 8, 2006 (rather than "2010") to on or about July 30, 2010. At the time of the job separation, the claimant worked as finance and leasing consultant for the interested employer. She was paid by commission. Over the course of the employment relationship, the claimant earned approximately \$140,000 to \$160,000 per year, an average of \$12,000 per month. The claimant understood and was qualified to perform her job.

The undersigned does not adopt the Office of Administrative Hearings' finding No. 2 and finds instead as follows: Prior to her four year tenure with the interested employer, the claimant was employed for approximately three years by another dealership and performed a finance-related job. Thus, the claimant's most recent seven years of work experience is limited to auto-finance. The claimant has not applied for positions in the auto-finance industry, which the claimant attributes to lack of employment opportunities. However, the employer's general manager testified there are numerous employment opportunities consistent with the claimant's experience in the claimant's labor market area.

The undersigned adopts the Office of Administrative Hearings' finding Nos. 3 through 13, subject to the following modifications.

As more fully set forth in the November 8, 2010 Initial Order, evidence of record establishes as follows: Over the course of the four year employment relationship, one of the employer's sales managers (Mr. Wilcox) made disparaging comments regarding people of various ethnicities, including Asians. The claimant is Asian and was offended. The claimant complained to the employer's general manager (Mr. Babcock), and he intervened, but Mr. Wilcox continued to make comments. The employer does not condone discrimination or work-related harassment. Approximately 165-170 employees work at the employer's Bellevue dealership. 40-50 of those employees are Asian-Americans. 50 percent of the dealership's

employees are women. The employer's human resources director (Ms. Hunt) is Asian-American. Although Ms. Hunt's office is at the claimant's workplace, and Ms. Hunt was readily accessible to employees (including the claimant), the claimant did not report her complaints regarding Mr. Wilcox to Ms. Hunt.

The claimant's perception notwithstanding, she was a valued employee. Though hired as a finance and leasing consultant, the claimant was promoted to the position of finance director in March 2007. Approximately two months before the job separation, at the claimant's request, she returned to her position as finance and leasing consultant. The claimant informed the general manager (Mr. Babcock) that she could make more money in that position. Indeed, the claimant always met the employer's sales quotas such that the employer once suggested that the claimant had "OCD" which the claimant viewed as a compliment.

The job separation was premised on a commission-related disagreement. As financing and leasing consultant, the claimant did not sell the cars at the employer's dealership, but she completed the sales-related paperwork. At the time of the job separation, four or five finance consultants worked at the dealership. They "took turns" completing paperwork because they were paid commission based on completed sales. On July 28, 2010, the claimant spent several hours preparing finance documents for the sale of a pre-owned car at the employer's Bellevue dealership. In addition to the purchase price, the customer spent several thousand dollars for a warranty because the car was not certified. The following morning (July 29), the customer returned to the Bellevue dealership and voiced extreme dissatisfaction with his purchase. The customer had learned there was a certified pre-owned car with factory warranty at the employer's Tacoma dealership. Having spent several thousand dollars on a warranty for the non-certified car, the customer felt "short changed" by the employer. Mr. Wilcox was the sales manager on duty. Pursuant to established protocol, Mr. Wilcox found a certified pre-owned car for the customer at the Bellevue dealership that was equivalent to the car in Tacoma. To effect the transaction, Mr. Wilcox also followed proper procedure: First, he had to "unwind" the July 28, 2010 car purchase. Given the customer's dissatisfaction, the July 28, 2010 car purchase would have been unwound regardless. In so doing, the July 28, 2010 purchase was rendered "dead." Then, the customer purchased the certified pre-owned vehicle. At the time, the claimant was not at work nor was she scheduled to work until 2 pm that afternoon. Thus, another financing consultant completed the paperwork for the sale. Given the sequence of events, the employer did not consider the vehicles to have been "switched." Rather, the employer determined the July 28, 2010 purchase and the July 29, 2010 purchase were separate

transactions. Consequently, the finance consultant who prepared the paperwork for the July 29, 2010 sale was given the commission.

When informed, the claimant was upset because she did not view the transactions as separate and thus believed she had earned and should have received the commission. The claimant faulted Mr. Wilcox and complained to the general manager (Mr. Babcock), but Mr. Babcock determined Mr. Wilcox had complied with procedure regarding the sales and commissions. On July 30, 2010 the claimant was scheduled to work but was a no call/no show. Via email correspondence, the claimant was cautioned that her services were essential and that her absence burdened her coworkers. The claimant was further cautioned that, if she did not return to work the following day, the employer would consider the employment relationship terminated. The following day (July 31), the claimant did not return to work. But for her belief that she had been unfairly denied a commission, the claimant would have reported for work. She attributed her decision to a "matter of principle."

The undersigned adopts the Office of Administrative Hearings' conclusion No. 1. As discussed in the November 8, 2010 Initial Order, although neither party set out to end the employment relationship, the claimant effectively did so when, despite explicit warnings from her employer that her services were needed, she did not report for work, thus abandoning her job. Accordingly, the voluntary quit statute governs her claim for unemployment benefits, and the question becomes whether the claimant ended her employment with good cause.

The undersigned adopts the Office of Administrative Hearings' conclusion Nos. 2 through 6. Under the Employment Security Act, an indefinite period of disqualification is imposed during which unemployment benefits are denied when a claimant ended employment without good cause. RCW 50.20.050(2)(a). Good cause is defined by statute and is limited to eleven specified circumstances. RCW 50.20.050(2)(b). Here, the above referenced circumstances are not evidence. First, racial discrimination in the work place is not condoned, but the undersigned is not persuaded the claimant was the target of racial discrimination. She was a valued employee; she was promoted; she earned and was paid significant commissions; and she worked at a dealership where a significant number of employees were Asian, including the Human Resources Director.

Regardless, the claimant quit because she disagreed with the employer regarding the payment of a commission. Clearly, the claimant worked very hard to earn her commissions, and her work on July 28, 2010 was no exception. When the transaction was unwound, she had reason to be disappointed. Although the claimant believed she nonetheless deserved the commission for the customer's subsequent purchase of another vehicle, the decision was not

hers to make. Evidence does not establish the employer's decision was premised on retaliation; evidence establishes the employer followed appropriate procedure. The claimant was not unfairly denied her commission. For purposes of unemployment benefit eligibility, she quit without good cause.

The undersigned does not adopt the Office of Administrative Hearings' conclusion No. 7 and concludes instead as follows: Unemployment benefit eligibility is premised in part on proof the claimant was able, available, and actively looked for work during each week benefits were claimed. RCW 50.20.010(c). Here, the employer's reply to the claimant's petition for review raises the issue of the claimant's compliance with the above cited statute. The claimant's most recent seven years of work experience has been limited to auto-finance. However, the claimant admittedly has not applied for any jobs with car dealerships during the weeks at issue. Whether (or not) such job opportunities existed in the claimant's labor market area is a point of conflict. The issue (raised by an aggrieved party, the employer) merits further consideration.

Now, therefore,

IT IS HEREBY ORDERED that the Initial Order of the Office of Administrative Hearings issued on November 8, 2010, is MODIFIED. Claimant is disqualified pursuant to RCW 50.20.050(2)(a) beginning July 25, 2010, 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 issue of claimant's compliance with RCW 50.20.010(1)(c) during the weeks at issue is REMANDED to the Department for further consideration and determination. *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, December 30, 2010.*

Annette Womac

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 decision/order, 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 the Commissioner's Review 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 or delivering it directly to the Commissioner's Review Office, Employment Security Department, 212 Maple Park Drive, Post Office Box 9555, Olympia, Washington 98507-9555, and to all other parties of record and their representatives. The filing of a petition for reconsideration is not a prerequisite for filing a judicial appeal.

JUDICIAL APPEAL

If you are a party aggrieved by the attached Commissioner's decision/order, 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 (30) days from the date of mailing as shown on the attached decision/order. If no such judicial appeal is filed, the attached decision/order will become final.

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

- a. Timely file your judicial appeal directly with the superior court of the county of your residence or Thurston County. If you are not a Washington state resident, you must file your judicial appeal with the superior court of Thurston County. See RCW 34.05.514. (The Department does not furnish judicial appeal forms.) AND
- b. Serve a copy of your judicial appeal by mail or personal service within the 30-day judicial appeal period on the Commissioner of the Employment Security Department, the Office of the Attorney General and all parties of record.

The copy of your judicial appeal you serve on the Commissioner of the Employment Security Department should be served on or mailed to: Commissioner, Employment Security Department, Attention: Agency Records Center Manager, 212 Maple Park, Post Office Box 9555, Olympia, WA 98507-9555. To properly serve by mail, the copy of your judicial appeal 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 of your judicial appeal you serve on the Office of the Attorney General should be served on or mailed to the Office of the Attorney General, Licensing and Administrative Law Division, 1125 Washington Street SE, Post Office Box 40110, Olympia, WA 98504-0110.

MISCELLANEOUS

Expert Fact Finding

██████████ LEXUS OF BELLEVUE Issue Contact Log

SSN ██████████

Issue Code: MC

Last Day Worked: 07/30/2010

Employer Name: LEXUS OF BELLEVUE [69333200]

Date/Time: 9/13/2010 9:29:00 AM

Contact: NGUYET TANG-Claimant

Call Status: Call From 206-229-8882-Answered

Call info: None

Called By: SCTC673

interview: Interview on File number = 1094123

125 of 132

Exhibit _____ Page _____

Expert Fact Finding

Interviewee:	NGUYET TANG	Relationship:	Claimant
Claimant:	NGUYET T TANG	SSN:	██████████
Issue Employer:	LEXUS OF BELLEVUE	LDW / Issue Code:	07/30/2010 MC
Start Time:	9/13/2010 9:29:34 AM	Last Modified:	9/13/2010 4:56:00 PM
Adjudicator:	SCTC673	DV Indicator:	
Issue Start Date:	07/25/2010	Issue End Date:	99/99/9999
Message Indicator:	E	BYE:	08/20/2011

What additional information do you have regarding this issue?

(Adj: You state you were fired, your employer states you quit. I need to verify what occurred during your separation...)

Mark sent me an email. I've been a very good employee. I had called in sick the last couple days of June because of my diabetes. I told Mark Babcock about discrimination from Nick (Sales Manager) who would make derogatory comments about Asian people. I got a lawyer, but I don't want this to be part of the record.

(Adj: Advised clmt again that I am taking statement about separation. Any information she provides today, will be included in the record and is available to her employer who is an interested party in the separation).

I was the finance director and stepped down to a finance consultant the end of May, because of my health. I could make just as much money, if not more as a finance consultant than I could as a director.

On 07/29/10, I stayed late for a customer until 10:30 pm. The next day the customer came back and decided to switch cars. I wasn't at work yet. Mark Babcock and Nick Wilcox talked and decided to give the sale to Sean Bautistat. He is Asian too, but I think it's because I'm a girl that they took the sale away from me. My shift was to start at 2:00 pm that day (07/30). I got there for an 11:30 meeting and found out that the sale was given to someone else. When I found out about it, I got so mad. It's like taking a cookie away from you. I was crying. Before I left, Mark told me that his decision was final. I said I'm not feeling at least 100%, I can't be working and I went home. I did not work my shift that day.

That day, Nina from HR sent me an email asking me if I was coming to work on Saturday as scheduled. I told her I wouldn't go back to work until things

126 of 132

Exhibit Page

were resolved. I would let you know. I wanted my deal back. I said you know Nina, I'm still not a 100%. If I'm not feeling 150% or even 100%, I'm not going to work. I was so upset that they took that sale from me.

I then got an email from Mark Babcock saying if you don't come to work, then I'm going to process your termination immediately. I called Lexus Headquarters on Saturday and they said I should call the owner Mr. O'Brien. On 07/31/10 around noon, I called Mr. O'Brien and told him about the situation.

(Adj: When you told your employer you would not return unless things were resolved, were you referring to the sale with the customer?)
That's correct. I wanted my deal back.

(Adj: So as long as they did not give you that sale back, you weren't going to return to work?)
Correct.

(Adj: Even though Mark told you the decision was final?)
Yes.

(Adj: had they not taken that car deal away from you, would you have made the decision not to go into work and not to return to work?)
Definitely not. I never even wanted to quit my job. I would never leave a \$160,000 a year job. I loved my job. It was so much less stress for me as. I was making as much or money than as a director. I was making so much money and it was luxury facility to work. If it hadn't been for them giving my car deal to someone else, I would still be working there.

For Office Use Only:
Review Decision

Please enter any Additional Comments and/or work search information below:

September 16th, 2010

Attn: Employment Security Dept -- Fax (800-301-1795)
Telecenter Appeals.

I, Nguyet Emily Tang, (SSN# [REDACTED] and phone #.206-229-8882) whom resides at 4601 NE 2nd Street, Renton, WA 98059, am writing this letter to request that the decision be reviewed and reconsidered. I was wrongfully terminated by the GM, Mark Babcock who discriminated against me based on my race and retaliated against me for reporting racial discrimination and other unethical goings on in the workplace. I did not voluntarily quit my job. At the time my employer terminated me I was making \$140,000.00 - \$160,000.00 per year when I was terminated because of unfair and discriminatory conduct that I was being subjected to at work.

[REDACTED] Kirsten

From: EMILY TANG [emilytang75@yahoo.com]
Posted At: Monday, September 13, 2010 5:49 PM
Conversation: Re:
Posted To: Inbox
Subject: Fw: Re:

Attn: Kirsten

Emily Tang
206-229-8882

-----Original Message-----

From: "Emily" <etang@lexusofbellevue.com>
Sent: Friday, July 30, 2010 1:53pm
To: "Lexus Mark" <mbabcock@lexusofbellevue.com>
Subject: Re:

I'm sorry Mark but I feel I'm treated unfairly. As of now, I don't feel comfortable coming back to work.

-----Original Message-----

From: Lexus Mark
To: etang@lexusofbellevue.com
ReplyTo: Lexus Mark
Subject: Re:
Sent: Jul 30, 2010 1:40 PM

Of course it would count against him:

-----Original Message-----

From: Emily
To: Lexus Mark
ReplyTo: etang@lexusofbellevue.com
Subject: Re:
Sent: Jul 30, 2010 1:22 PM

Hello Mark,

It is a matter of a principle. I presented the car deal across the board. What if he ended up w/no products. Would Sean have it count against him?

They switched car to the CPO and extended service contract is not as important to them I assumed. They didn't trade in the car - it was a switch.

Please reconsider the case. I'm really heated about this since yesterday and don't think I'm useful to produce for LOB today. All my deals are good to go except for that they are undelivered.

I'm so sorry Mark.

9/14/2010

Emily

Sent via BlackBerry from T-Mobile

002776

STATE OF WASHINGTON
EMPLOYMENT SECURITY DEPARTMENT
ADVICE OF RIGHTS
08/28/2010

|||||
770
NGUYET T TANG
4601 NE 2ND STREET
RENTON WA 98059-5249

RETURN TO:
EMPLOYMENT SECURITY DEPT
FAX : (800)301-1796
UI IMAGING
PO BOX 19019
OLYMPIA WA 98507-0019

BYE: 08/20/2011

ID: [REDACTED]

There is a question about your eligibility for benefits. You must respond by 09/07/2010. Failure to respond will result in a decision based on available information and may result in a denial of benefits and a possible overpayment.

IMPORTANT: Before signing, read the CLAIMANT RIGHTS section. After you read your rights, please sign this advisory.

I have read and understand my rights. I made this statement to get unemployment benefits. The information I provided is true to the best of my knowledge. I understand that my employer may be contacted.

Signature: *NT*

Telephone number: (206) 229-8882 Date: 8/30/2010

If you are currently receiving benefits or have received benefits from your current claim in the last four weeks, we must continue to pay you. We call these payments "conditional" because you receive them on the "condition" that you qualify. Your pay notice will tell you if it is a conditional payment. If we deny your conditional benefits you must repay them. We cannot waive an overpayment of conditional payments. See WAC 192-220-017.

WITH REGARD TO THE PERIOD BEGINNING 07/25/2010:
We need more information about your recent separation from work. A questionnaire is being mailed to you. Please fill it out and FAX or mail it to the number or address shown above.

NGUYET T TANG
4601 NE 2ND STREET
RENTON WA 98059-5249

(For office use only Separation issues/A5)

CLAIMANT RIGHTS

We need information to make a decision about your unemployment benefits.

We will use this information to determine if you are eligible for benefits. If you have been asked to respond in writing, mail or fax your response to the address or fax number listed. Please include any evidence or documents that may help us make a decision.

After receiving your response, we will contact you if we need additional information.

Tell the truth

If you make a false statement or withhold information about your claim, that is considered fraud. If you commit fraud, you may be denied benefits for future weeks, you may have to pay back benefits you have received, and you may have to pay a penalty.

You have the right to an interview

You have the right to an interview by telephone or in person before a decision is made about your claim. If you want an interview, call the TeleCenter. You may have any person, including an attorney, represent you at the interview. You may present evidence, documents, or witnesses; cross-examine witnesses or parties present; and ask for copies of all records or documents on the issue.