

67703-9

67703-9

NO. 67703-9 - I

COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON

GEORGE O. TAMBLYN, IV,  
Appellant,

v.

STATE OF WASHINGTON  
EMPLOYMENT SECURITY  
DEPARTMENT,  
Respondent.

APPELLANT'S BRIEF

DATED this \_\_\_ day of December, 2011

SUBMITTED BY:

GEORGE O. TAMBLYN (III)  
WSBA 15429  
Attorney for Appellant  
8043 West Mercer Way  
Mercer Island, WA 98040  
(206) 236-2769  
[GTamblyn@advocateslg.com](mailto:GTamblyn@advocateslg.com)

FILED  
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STATE OF WASHINGTON  
2011 DEC -7 PM 2:10

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A. Assignments of error

1. THE DELAY OF APPELLANT, TAMBLYN, IN RESPONDING TO THE DISMISSAL ORDER WAS EXCUSABLE AND ONLY ONE OF THREE FACTORS TO BE CONSIDERED.

2. THE TRIAL COURT ERRED IN NOT CONSIDERING THE TAMBLYN'S CONTENTION THAT HE HAD A MERITORIOUS CLAIM FOR UNEMPLOYMENT BENEFITS.

Issues Pertaining to Assignments of Error

No. 1

Here the Tamblyn erroneously believed issues related to his claim for unemployment benefits had been resolved and, thus, did not file a timely notice of appeal with ESD until he discovered that ESD was attempting to recover past payments paid to him.

What standard should the reviewing tribunal apply to allow a late filing of an appeal?

No. 2

Tamblyn in his administrative appeal (CP 16 – Appendix 1) contended that the facts and law supported his underlying claim for benefits, notwithstanding his late filing of the notice of appeal. The merits of Tamblyn’s claim for benefits was not contested by ESD in denying his right to appeal. The ALJ and the Superior Court did not consider this issue in denying Appellant’s right to a hearing on the merits.

Should the existence of a meritorious claim be a factor in allowing an appeal to proceed, despite the late filing of a notice of appeal?

B. Statement of the Case

This case is an appeal from a judgment of the Superior Court affirming the order of the ESD denying Tamblyn the right to appeal a determination denying his claim to Unemployment benefits because the appeal was not timely filed. Tamblyn had no hearing on the merits of his claim.

Appellant, Tamblyn, was president and sole stockholder of Lake Union Yacht Center, Inc. (LUYC) As such, he elected to be covered for unemployment benefits and LUYC paid the appropriate amounts required for his coverage. When LUYC went out of business in December, 2009, Tamblyn claimed and began receiving unemployment benefits and, despite a

very tough job market, began searching for a new job. He found a job in April of 2010. In late April Tamblyn received a eight page, single spaced, notice from ESD (dated 04/28/10 – Certified Appeal Board Record<sup>1</sup> 27 – 34, Exhibit 3) informing him that his benefits had been denied because LUYC had not been officially dissolved (it was, in fact, out of business) and he had not been formally “terminated” from his job at LUYC. The notice also spelled out that he had 30 days to appeal the notice. The notice is confusing. While it does say on page 6 (Determination Notice numbering) that Tamblyn was obligated to repay the amounts he had already received, on page 3 the notice reads as follows: “**RESULT:** Benefits are denied beginning 04/23/2010.” (emphasis in the original document). See the full notice attached as Appendix 3.

Tamblyn was receiving substantial mail regarding LUYC’s going out of business and did not have time to examine it all carefully, having just started a new job with a substantial commute required and did not read the notice carefully. Since the notice coincided with the start of his new job, Tamblyn concluded that he was being denied prospective benefits. Since he understood that he was no longer entitled to benefits because he had found

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<sup>1</sup> The Certified Appeal Board Record was designated in the initial Designation of Clerk’s Papers, but the Determination Letter and much of the other record was not included in the CP although they are part of the CABR. A Supplemental Designation has been filed with the Trial Court.

work, he did not realize that, if he did not appeal, ESC would seek the return of benefits he had already received, approximately \$5,000, and he regarded the matter as concluded and did not appeal.

About four months later, on receiving notice that ESD was commencing garnishment proceedings, Tamblyn realized the import of his erroneous assumption regarding the notice of determination he had received and promptly filed a notice of appeal. This was disallowed by the ALG and a motion for reconsideration was denied. (See Tamblyn's statement in support of the motions; (CP 16 - Appendix 1)

### C. Argument

#### FIRST ASSIGNMENT OF ERROR

The "ORDER OF DISMISSAL UNTIMELY APPEAL (11/27/10) is being appealed in the instant case. Essentially, the Administrative Judge adopted Tamblyn's Petition for review in its entirety in Finding of Fact No. 1. (CP – 17 -19; Appendix 2)

The ALG cited as authority for the Dismissal of the appeal: *Wells v. Employment Sec. Dep't*, 61 Wn. App. 306, 809 P.2d 1386 (1991). Thus, the principal issue on appeal is whether or not *Wells* legally supports the decision. In the *Wells* case, the Trial court held that the ALG had been in

error in denying an appeal based on a one-day delay in the filing of the appeal, and the Court of Appeals affirmed, setting forth the standards to apply:

“ The courts apply a three-prong test in determining whether the claimant has established ‘good cause’ for filing a late appeal. The criteria considered are: (1) the shortness of the delay; (2) the absence of prejudice to the parties; and (3) the excusability of the error.

“ For questions of law and mixed questions of law and fact, the proper standard of review is ‘error of law.’ The question of whether a claimant has shown good cause for an untimely appeal is a mixed question of law and fact, and the error of law standard applies.”

“ Under the error of law standard, the reviewing court is entitled to exercise its inherent and statutory authority to make a de novo review of the record independent of the agency's actions.” (emphasis supplied)

#### THE THREE PRONG TEST:

1. Shortness of the delay. Although in *Wells* the delay was only one day, the shortness of the delay was not the basis for the Court’s decision. The decision was based upon the Tamblyn’s showing of good cause. The court did not specifically address the amount of time that would be considered short or too long. In all cases, the shortness of the delay is

only ONE of the three prongs. It is our position that Tamblyn should prevail on the other two.

2. Prejudice to the parties. The Department has shown no prejudice to its position caused by the delay in filing the appeal. However, it is patently obvious that the Tamblyn will be prejudiced by not having a hearing on the merits and will have to pay over \$5,000 to the Department, when his position is that he was entitled to the benefits he had received. The ALG made no finding that the Tamblyn would not be prejudiced. This Court, *de novo*, can make a finding with respect to prejudice.

3. Good cause for the delay. Similar to Mr. Wells, Tamblyn was unsophisticated about the Department's procedures and he also had an understandable reason. He quickly filed his late appeal notice after he had learned the reality of the meaning of the notice of determination. Claimant also explained the stress he had been under and the fact that he had been receiving counseling and medication for that stress and depression.

Finally, the *Wells* case summed up the rationale behind the Court's decision thusly:

In light of this mandate to liberally construe the statute in favor of unemployed workers, we are unwilling to conclude that the Legislature intended to deprive the unsophisticated applicant of the opportunity to have his benefits claim heard

on the merits based on a 1-day delay which occasioned no prejudice. As the United States Supreme Court has said, "technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love v. Pullman Co.*, 404 U.S. 522, 527, 30 L. Ed. 2d 679, 92 S. Ct. 616 (1972). Therefore, we hold that the Department erred in interpreting the legal standard for "good cause" determinations, and that Wells has shown good cause to excuse his untimely appeal.

The judgment is affirmed. Wells' request for attorney fees and costs under RCW 50.32.160 is granted provided that Wells complies with RAP 18.1(d).

#### ASSIGNMENT OF ERROR NUMBER TWO

The law favors giving parties "their day in court." By analogy to the case at bar, a default judgment can be set aside within one year if the defaulted party can show some excusable neglect and a meritorious defense.

RCW 4.72.010 (2), (3), (4), (5), (6), and (7) shall be by petition verified by affidavit, setting forth the judgment or order, the facts or errors constituting a cause to vacate or modify it, and if the party is a defendant, the facts constituting a defense to the action; and such proceedings must be commenced within one year after the judgment or order was made, unless the party entitled thereto be a minor or person of unsound mind, and then within one year from the removal of such disability.

In terms of due process and equitable principles, is it fair to apply a stricter standard to a person subject to the rules of Administrative Procedure when a person, personally served, in a formal lawsuit, has greater latitude and is subject to a different standard?

Indeed, in a recently published opinion affirming the setting aside of a default judgment, Division III, stated:

Washington has a strong preference for giving parties their day in court; thus, default judgments are disfavored. *Morin v. Burris*, 160 Wn.2d 745, 754, 161 P.3d 956 (2007); *Griggs*, 92 Wn.2d at 581-582. While not a proceeding in equity, the decision to vacate a judgment should be made in accordance with equitable principles. *White*, 73 Wn.2d at 351.

*Lamar Adver. v. Harwood*, 162 Wn. App, 385, 254 P3d 208 (2011)

The *Lamar* court concluded that the existence of a meritorious defense was of primary importance in supporting a motion to set aside a default judgment.

D. Conclusion: As quoted in *Wells* (above), the U.S. Supreme Court bears repeating: “technicalities are particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process.”

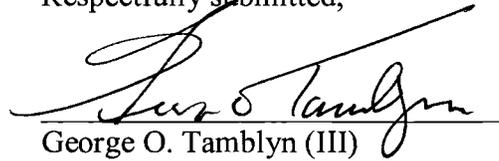
For the reasons above stated, Appellant, Tamblyn, asks this Court for the following:

1. For remand to the Superior Court with instructions to remand to ESD ordering the allowance of Appellant’s appeal and a hearing on the merits.

2. An Order granting Appellant his attorney's fees and cost in accordance with applicable statutes.

DATED THIS 7 DAY OF DECEMBER, 2011:

Respectfully submitted,



George O. Tamblyn (III)

Attorney for Appellant  
WSBA # 15429

## **APPENDIX**

No. 1 – Appellant’s pro se appeal.

No. 2 - ALG’s ruling

No. 3 - ESD letter to Appellant 11/27/10

RECEIVED Docket No: 02-2010-25789

Agency Records Center

DEC 01 2010

RECEIVED

From: George O. Tamblyn IV

Employment Security Dept  
Commissioner's Review Office November 19, 2010

NOV 30 2010

Records Center

Petition for Review:

I am writing this review so that you can see that there is no fair or equitable reason why I should be denied employment insurance coverage for the dates I was unemployed. I was the owner operator of Lake Union Yacht Center and paid into employment insurance for years. I was forced to close my business on November 30, 2009. I suffered severe financial hardship during this current economic crisis. This was a business I grew from the back of my truck to a \$3mil dollar a year business with over 30 employees. It was a sudden closure due to the timing of an expansion move only 1 1/2 years prior.

This was a personal hardship of one I had never experienced. It gave me extreme anxiety and even depression for which I sought professional help and medication for as documented with the court. I was struggling with bankruptcy and facing losing everything I had gained in 15 years of hard work and growth. It was like losing a loved one.

The fact is I am entitled to the unemployment that I received. I did miss the appeal date, I was struggling with depression and working very hard at finding a job to support my family. I started with Marine Service Center in Anacortes on April 5, 2010 which is when I received the cancellation and denial of my unemployment benefits. I took this as timely as I had a new job to start and began my 200 mile a day commute for the last 7 months as General Manager for Marine Servicer, Anacortes. This was a very difficult time for me to say the least. I was seeking professional assistance to keep myself functional.

I was receiving a 3" stack or more of mail a day from the closure of Lake Union Yacht Center and did not have the physical or mental stamina to drive 200 miles a day, work a new job and try to keep up on all the failed company's mail. Therefore, when I read that my benefits were denied from this point on, I understood that as ok as I had a new job to start.

The fact that I maybe responsible to pay back the unemployment that I had deserved due to the fact that I missed an appeal date, is really hard for me to swallow. Justice is not served if I must repay monies I was entitled to. I have lost everything I had in personal bankruptcy and now this? I paid into employment insurance and I had to use it, why would I have to repay it?

Please consider this when making your decision. I hope you can see that I was struggling with a lot during that time and did not understand the process of the appeal.

Sincerely,  
George Tamblyn

11/19/10

11-29-10 cpm

STATE OF WASHINGTON  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE EMPLOYMENT SECURITY DEPARTMENT

RECEIVED

DEC 01 2010

Employment Security Dept.  
Commissioner's Review Office

IN THE MATTER OF:

George O. Tamblyn IV  
Claimant

DOCKET NO: 02-2010-25789

ORDER OF DISMISSAL  
UNTIMELY APPEAL

ID: 543-02-3992 0

BYE: 11/27/2010

UIO: 770

~~Hearing: This matter came before Administrative Law Judge Jeff Manson after due and proper notice to all interested parties on October 25, 2010 at Seattle, Washington.~~

**Persons Present (by telephone):** The claimant-appellant, George O. Tamblyn IV.

**STATEMENT OF THE CASE**

At issue in the hearing is whether the appeal was filed untimely or whether the appellant had good cause for filing a late appeal.

**Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:**

**FINDINGS OF FACT:**

1. The employer and the Department were provided with due notice of the time, date and place of the hearing but failed to appear. Consequently, the findings in this case are based primarily upon evidence presented by or on behalf of the claimant.

~~2. On April 28, 2010, the Department issued a Determination Notice with a deadline for appeal of May 28, 2010.~~

3. The claimant received the Notice shortly after it was mailed and read it, although not very carefully. Since he had just started working on April 5, 2010, he did not think an adverse action from the Employment Security Department would affect him, so he ignored the letter.

4. Around early September 2010, the claimant received a certified letter informing him that his wages would be garnished because of the overpayment owed to the Department. The claimant called the Department and was informed of the appeal process.

5. The claimant filed his appeal on September 10, 2010.

DISMISSAL UNTIMELY APPEAL - 1

02-2010-25789

6. Around mid-2009, the claimant was diagnosed with depression and anxiety and has been taking anti-depressants since then. He also saw an ARNP for one hour every two weeks for several months, including around the time he received the Determination Notice.

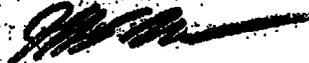
**CONCLUSIONS OF LAW:**

1. The provisions of RCW 50.32.020, 50.32.025, 50.32.075 and WAC 192-04-090 apply.
2. Pursuant to RCW 50.32.075 the thirty (30) day time limitation on an appeal may be waived if good cause for the late-filed appeal is shown. A three prong test is applied in determining whether a claimant has established good cause for a late-filed appeal. The criteria considered are as follows: "... (1) the shortness of the delay; (2) the absence of prejudice to the parties; and (3) the excusability of the error." *Wells v. Employment Security Dep't*, 61 Wn. App. 306, 809 P.2d 1386 (1991); *Devine v. Employment Security Dep't*, 26 Wn. App. 778, 614 P.2d 231 (1980). With regard to the shortness of the delay and the excusability of the error, the analysis is based upon a sliding scale in which a short delay requires a less compelling reason for the failure to file a timely appeal than does a longer delay. *Wells*, supra.
3. Based on the relevant Findings of Fact set forth above, the appellant has not established that the appeal was filed late with good cause.

**IT IS HEREBY ORDERED:**

The claimant's appeal in this matter is untimely and is **DISMISSED** for lack of jurisdiction.

Dated and Mailed on October 27, 2010 at Seattle, Washington.



Jeff Manson  
Administrative Law Judge  
Office of Administrative Hearings  
600 University Street, Suite 1500  
Seattle, WA 98101-3126

RECEIVED  
DEC 01 2010

Employment Security Dept.  
Commissioner's Review Office

**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. \_\_\_\_\_

**PETITION FOR REVIEW RIGHTS**

This Order is final unless a written Petition for Review is addressed and mailed to:

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

and postmarked on or before **November 29, 2010**. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. 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. *The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review.* Do not file your Petition for Review by Facsimile (FAX). Do not mail your Petition to any location other than the Agency Records Center.

JJM:JJM

**Mailed to the following:**

George O Tamblyn IV 13517 209th Ave SE Issaquah, WA 98027-8487	Claimant-Appellant
Lake Union Yacht Ctr Inc 1080 W Ewing Pl Unit A1 Seattle, WA 98119-4800	Employer
Employment Security Department Fraud Management Unit PO Box 9046 Olympia, WA 98507-9046	Department

**RECEIVED**

**DEC 01 2010**

Employment Security Dept.  
Commissioner's Review Office

000000000000NMDT

STATE OF WASHINGTON  
EMPLOYMENT SECURITY DEPARTMENT  
Determination Notice  
04/28/2010

770  
GEORGE O TAMBLYN IV  
13517 209TH AVE SE  
ISSAQUAH WA 98027-8487

Return address:  
EMPLOYMENT SECURITY DEPT  
Office of Special Investigations/DMU  
PO Box 9046  
Olympia WA 98507-9046  
Fax 360 486-3031

BYE: 11/27/2010

ID: [REDACTED]

A copy of this determination was mailed to the interested parties at their address on 04/28/2010.

**YOUR RIGHTS/SUS DERECHOS:** If you disagree with this decision, you have the right to appeal. Your appeal must be received or postmarked by 05/28/2010. See "YOUR RIGHT TO APPEAL" at the end of this decision. Si no est{ de acuerdo con esta decisin, tiene el derecho de registrar un apelacin. Vea "SU DERECHO DE APELACION" al final de esta decisin.

**NOTICE/AVISO:** The language below is intended to be general context of the cited law. You may ask for a copy of the complete law by calling your Telecenter at 1-800-318-6022 or by logging on to [www.rcw.go2ui.com](http://www.rcw.go2ui.com). La intencion del lenguaje de abajo es para dar un contexto general de la ley que se cita. Puede pedir una copia de esa ley al TeleCentro 1-800-318-6022 al entrar en [www.rcw.go2ui.com](http://www.rcw.go2ui.com).

State law says you are not eligible for unemployment benefits if your claim is based on any wages from a corporation, you are an officer of that corporation, and:

- You own 10 percent or more of the outstanding corporate stock, or
- A family member is an officer who owns 10 percent or more of the outstanding corporate stock.

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You may be eligible if the corporation has dissolved or if you have permanently resigned or been permanently removed from your position with the corporation.

The term "family member" includes persons related to you by blood, marriage, or registered domestic partnership as parents, stepparents, grandparents, spouses or domestic partners, children, brothers, sisters, stepchildren, adopted children, or grandchildren.

See RCW 50.04.310.

**FACTS:**

When you filed your claim for unemployment benefits, your claim was based on wages from Lake Union Yacht Center Inc. You were sent an Advice of Rights on April 1, 2010 questioning your status and ownership to the corporation. To date, you have not responded.

Per the Master Business Application, you are a corporate officer who owns 100 percent of the corporation.

According to Department of Revenue and Secretary of State the corporation is currently active and has not dissolved.

**REASONING:**

Based on the available information you are a corporate officer who owns 10 percent or more of the corporation. As an officer who owns 10 percent or more you do not meet the eligibility requirements for unemployment benefits.

**DECISION:** Based on information available to us you are an officer of a corporation, your claim is based on wages from that corporation, and you either own 10 percent or more of the corporate stock or you are a family member of an officer who owns 10 percent or more of the corporate stock.

**RESULT:** Benefits are denied beginning 11/29/2009 and ending 99/99/9999.

04/28/2010

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State law says you will be denied unemployment benefits if you knowingly make a false statement or withhold information. This is considered fraud. See RCW 50.20.070.

The denial is for the week(s) in which you commit fraud and any other weeks for which you are paid benefits because of fraud. You are also denied benefits for additional weeks as follows:

- 26 weeks if this is your first fraud.
- 52 weeks if this is your second fraud.
- 104 weeks if this is your third or later fraud.

The additional denial period begins on Sunday of the week this decision is mailed.

You are required to repay all benefits you received as a result of fraud. Those benefits are listed on the attached Schedule of Claim Report.

If you have committed fraud more than once, you also owe a penalty as follows:

- 25 percent of the benefits that were overpaid for a second fraud.
- 50 percent of the benefits that were overpaid for a third or later fraud.

**FACTS:**

Your records submitted to the department reflect inaccuracy to deceive the department. You did not disclose your ownership or status as corporate officer to the department.

**REASONING:**

It is your responsibility to correctly report information that affects your claim. You knowingly misrepresented your claim with the intent to receive benefits that you were not entitled to.

**DECISION:** Based on available information, you knowingly made a false statement or withheld information to obtain benefits for which you were not eligible.

**RESULT:** Benefits are denied beginning 04/25/2010 and ending 10/23/2010.

04/28/2010

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**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 05/28/2010. 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.

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](http://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 est[ de acuerdo con esta decisi[on, tiene el derecho de apelar. La apelaci[on es una declaraci[on por escrito diciendo que no esta de acuerdo con esta decisi[on y quiere pedir una audiencia con un juez administrativo de la Oficina de Audiencias Administrativas (OAH). Su apelaci[on deber[ recibirse o tener

04/28/2010

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EXHIBIT # 2P4

matasellos fechado, en o antes de: 05/28/2010, 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 por qué su apelación es tardía. El juez decidirá si tiene "una buena razón" para apelación tardía.

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, pégalo 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. Las mayores 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](http://www.appeal-sp.go2ui.com) o llame al TeleCentro.

**RECLAMANTE:** Si no está 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.

LAKE UNION YACHT CTR INC  
UNIT A1  
1080 W EWING PL  
Seattle WA 98119

04/28/2010

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EXHIBIT # 2 P. 5

You are not eligible for waiting period credit due to this denial. The accompanying determination denies your benefits for weeks that have been paid. This causes an overpayment of \$4,158.00 as shown on the Schedule of Claim Report. The overpayment cannot be waived as you are at fault. You must repay this amount under RCW 50.20.190.

If you cannot repay the amount of the overpayment in full, we will calculate your minimum monthly payments. You may also ask for a payment agreement or make an Offer in Compromise.

You (and your employer, if there is an interested employer) have the right to appeal any of the following regarding this overpayment:

1. The reason for the overpayment;
2. The amount of the overpayment;
3. The finding of fault;
4. The reason for the denial of waiver of the overpayment.

Linked overpayments consist of both regular and conditional payments. The regular portion of the overpayment may be considered for waiver if it is determined you were not at fault in the establishment of the overpayment.

The enclosed Schedule of Claim Report shows all weeks paid which are affected by this decision.

The Schedule of Claims Report does not include the additional payments you may have received as part of the federal stimulus package. If you received these payments and you were not eligible for unemployment benefits, you are also not eligible for the additional \$25.00 federal weekly benefit. We will bill you for these overpayments at a later date.

Weeks affected by more than one decision are marked with an "X" in the "Mult Decs" (Multiple Decisions) column. If the overpayment is still part of another decision, the Overpayment Amount is enclosed in parentheses ( ). Weeks of overpayment without parentheses are now part of this decision for as long as this decision is in effect.

Overpayments assessed by two or more decisions have to be paid back only once but are shown here for your information. This decision may change your overpayment balances and may affect our collection activity.

04/28/2010

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EXHIBIT # Z.P.6

Payment or offset credit(s) received on the day your decision is written are not included in these figures. Any payment or credit not shown will be displayed on your first billing statement.

If any portion of your benefits were paid on your behalf to the Division of Child Support (DCS) for child support and/or the Internal Revenue Service (IRS) for income tax withholding, they are considered paid to you and become a part of the overpayment.

You have 30 days to appeal this decision.

If you wish to begin making payments, write a short statement requesting that your check or money order be applied to your overpayment. Include your social security number on your payment and send to:

Employment Security Department  
Benefit Payment Control  
PO Box 24928  
Seattle WA 98124-0928

04/28/2010

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EXHIBIT # 2.P.7

SCHEDULE OF CLAIM REPORT						
Week Ending	Earnings Report	Verify	Benefits Pwd/Entit	Opay Amt	Mult Decs	Fraud Fraud Penalty
12/05/09	0.00	0.00	000/000	0		YES NO
01/16/10	0.00	0.00	WP /000	0		YES NO
01/23/10	0.00	0.00	378/000	378		YES NO
01/30/10	0.00	0.00	378/000	378		YES NO
02/06/10	0.00	0.00	378/000	378		YES NO
02/13/10	0.00	0.00	378/000	378		YES NO
02/20/10	0.00	0.00	378/000	378		YES NO
02/27/10	0.00	0.00	378/000	378		YES NO
03/06/10	0.00	0.00	378/000	378		YES NO
03/13/10	0.00	0.00	378/000	378		YES NO
03/20/10	0.00	0.00	378/000	378		YES NO
03/27/10	0.00	0.00	378/000	378		YES NO
04/03/10	0.00	0.00	378/000	378		YES NO

04/28/2010

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EXHIBIT # Z P 8

NO. 67703-9 - I

COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON

GEORGE O. TAMBLYN, IV,  
Appellant,

v.

STATE OF WASHINGTON  
EMPLOYMENT SECURITY  
DEPARTMENT,  
Respondent.

Affidavit of Service

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2011 DEC -7 PM 2:10

I hereby certify on the date below, pursuant to a stipulation for email service I emailed a true copy of APPELLANT'S BRIEF to: Jennifer S. Steele, AAG at [JenniferS3@ATG.WA.GOV](mailto:JenniferS3@ATG.WA.GOV)

DATED this 7<sup>TH</sup> day of December, 2011

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