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NO. 68442-6

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

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MELODIE R. HOFF,

Appellant,

v.

STATE OF WASHINGTON,  
EMPLOYMENT SECURITY DEPARTMENT,

Respondent.

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STATE OF WASHINGTON

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**RESPONDENT'S BRIEF**

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## I. INTRODUCTION

A person is disqualified from receiving unemployment compensation when she voluntarily quits work without good cause. The Employment Security Act establishes an exclusive list of 11 reasons a person may quit with good cause.

Melodie Hoff performed clerical and legal assistant work for a semi-retired, solo-practitioner attorney. She was dissatisfied with the amount she was being paid and discussed her dissatisfaction with her Employer and asked him for raises. Her Employer gave her a raise in March 2009. Hoff also asked the Employer to pay for her parking expenses up front rather than reimbursing her. The Employer informed her on the morning of October 1, 2009, that he would pay for a monthly parking pass for her. Hoff said "ok," did not raise any other concerns with her Employer, and left the Employer's office. Later that morning, Hoff abruptly quit. In a note she left for her Employer, she explained the primary motivating factor behind her decision to quit was she was still displeased with the amount she was paid.

Hoff filed for unemployment benefits. The Commissioner of the Employment Security Department found Hoff did not prove she quit for any of the 11 exclusive reasons that constitute good cause for quitting under RCW 50.20.050(2)(b) and denied Hoff's claim. The Commissioner

also ordered Hoff to repay overpayments of regular and conditional benefits to which she was not entitled. Because the Commissioner's decision is in accordance with the employment security law, Chapter 50.20 RCW, the decision should be affirmed.

## **II. COUNTERSTATEMENT OF THE ISSUES**

- A. Under RCW 50.20.050(2)(b), individuals who voluntarily quit their jobs are ineligible to receive unemployment benefits unless they quit for one of the 11 exclusive reasons listed in that statute. Did the Commissioner properly conclude Hoff failed to prove by a preponderance of the evidence that she quit for any of the exclusive "good cause" reasons in RCW 50.20.050(2)(b) when the primary motivating factor behind her decision to quit was her unhappiness with her pay and she did not discuss any of the "good cause" reasons with her Employer prior to quitting?
- B. Did the Commissioner properly order Hoff to repay the overpayments of regular and conditional benefits to which she was not entitled following the Department's determination that she did not have good cause to quit her job?

## **III. STATEMENT OF THE CASE**

On September 13, 2007, David G. Zimmar (Employer), a semi-retired attorney, hired Hoff as a clerical and legal assistant, with a beginning salary of \$240 a week; the Employer also agreed to separately reimburse Hoff for her parking expenses. Clerk's Papers (CP) at 94-95, 113, 118-19,

194-95(1).<sup>1</sup> At the end of 2008, Hoff began complaining to her Employer that she was not making enough money. CP at 114-16, 195(1).

In March 2009, the Employer gave Hoff a \$50 per week raise from \$240 to \$290. CP at 96, 116, 119-20, 135, 195(2). Despite the raise, Hoff continued to complain that she was not making enough money. CP at 122, 195(4). Hoff even sent her Employer e-mails about her inability to afford to prepay for parking for which the Employer later reimbursed her. CP at 113, 119-20, 196(11).

On October 1, 2009, the Employer informed Hoff he had resolved the parking matter by getting her a monthly parking pass for which he would be billed. CP at 121, 138, 196(11). Hoff said “ok” and left the Employer’s office. CP at 121, 138, 196(11). Later that morning, the Employer heard the front door close. CP at 121, 196(12). He went out of his office only to find Hoff’s keys and a note in which Hoff reiterated her displeasure with her pay and made it clear that she had quit. CP at 94, 96, 100, 113-14, 121-22, 194-96 (1, 11-12). In Hoff’s words, “I left the office and I just quit, so that was what happened. I can’t remember anything further.” CP at 100.

After abruptly quitting, Hoff filed a claim for unemployment benefits, stating she quit because of “horrible working conditions” and

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<sup>1</sup> The Decision of Commissioner adopted the Administrative Law Judge’s (ALJ’s) findings of fact and conclusions of law. CP at 214. The number in parenthesis refers to the ALJ’s Finding of Fact (FF) or Conclusion of Law (CL). CP at 194-198.

because her Employer ignored her requests for raises. CP at 154, 173-78. The Department denied Hoff's claim, concluding she failed to show good cause for quitting her job. CP at 154. Since Hoff had been paid weekly benefit checks while the Department determined her eligibility (\$119 in regular benefits and \$5,661 in what are known as conditional benefits), the Determination Notice resulted in an overpayment of \$5,780 that Hoff was required to repay. CP at 158, 160.

Hoff appealed, and an administrative hearing occurred. At that hearing, Hoff gave three reasons for quitting:

ALJ: Okay. What else? Anything else? Any other reasons?

Hoff: That's my reasons: Reduction of hours, yelling and - and also the issue with the [Employer's former] client.

CR at 106.

**Reduced hours.** As a semi-retired attorney, Hoff's Employer only kept business hours four days a week. CP at 118, 195(1). From September 13, 2007, to March 2009, the Employer paid Hoff \$240 per week and separately reimbursed Hoff's parking expenses. CP at 113, 118-20, 195(1). Hoff's pay, however, was not based upon the number of hours she worked. CP at 118, 195(3). Instead, Hoff was permitted to work whenever she wished, as long as she came in on each of the four days he was in the office,

and as long as she got the assigned work done.<sup>2</sup> CP at 116-18, 143-44, 195(2), 197(5). The Employer only reduced Hoff's pay if she missed an entire day; when that occurred, her pay for that week would be reduced by a fourth for missing an entire day. CP at 119-20, 195(3).

While Hoff testified her hours were cut at the time of the \$50 pay raise in March 2009, there was not a set number of hours for the Employer to cut. CP at 95, 100, 116, 119, 143-44, 184, 195(2). Even if her hours were cut in March 2009, the net result was that she was paid more for working fewer hours. CP at 119, 195(4), 197(5). Whatever the net effect, she did not quit at that time. CP at 101, 195(4), 197(5). Instead, she accepted the raise and hours and continued to work for six months. CP at 101, 195(4), 197(5).

**Yelling.** Hoff stated her Employer yelled at her; she also heard the Employer occasionally yelling at his family members and others through the closed door of his office. CP at 99, 107-108, 127-29, 195(5, 6). Hoff claimed she gave her Employer a note in early August 2009 that said she did not like being yelled at. CP at 107-108. Following the note, she still heard "stuff going on" behind her Employer's closed office door—"he would yell at family members and all this other stuff." CP at 108.

The Employer, however, stated Hoff "never" discussed yelling with him. CP at 47. He only recalled one incident in May 2009 where he yelled

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<sup>2</sup> The Employer's testimony on this point was deemed more credible than Hoff's. CP at 195(2).

at Hoff after he returned from vacation. CP at 127-29, 195(6). At that time, Hoff confronted her Employer, asserting it was not right that he had the money to go on vacation when she and her son could not pay their bills. CP at 128, 195(6). Hoff admitted to having found out her Employer went to Europe and Russia for vacation from the Employer's calendar in his office. CP at 128, 195(6). The Employer was angry at Hoff for what he perceived to be an intrusion into his personal affairs. CP at 127-29, 195(6).

Hoff testified she is a Baptist and that it is against her religious beliefs to be yelled at; it is especially traumatic for her because of her family life in her youth. CP at 103-104, 195(5). Hoff, however, did not quit in May 2009 when her Employer yelled at her for looking at his private calendar without his permission, and she never raised with him an ongoing issue about his yelling, either at her or at others. CR at 126-27, 195(7), 197(6).

Hoff claimed her Employer's yelling caused her to experience involuntary eyelid spasms and that her optometrist ("OD") advised her to quit.<sup>3</sup> CP at 102-103, 195(9). However, Hoff's optometrist, in an undated letter with a faxed date of March 12, 2010, stated Hoff suffered stress-induced eyelid spasms in October 2009, and that he had recommended warm compresses and stress reduction, not that she quit. CP at 102-103, 192, 195(9). Moreover, Hoff did not tell her Employer she was having medical

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<sup>3</sup> An optometrist is a Doctor of Optometry, or O.D., and should not be confused with a Doctor of Medicine, or M.D., such as an Ophthalmologist. CR at 192.

problems as a result of stress from her job, nor did she ask her Employer for a leave of absence to resolve the condition. CP at 108-109, 126, 130, 196(10), 197(6).

**Former client.** Hoff testified she was shocked about the activities of one of the Employer's former clients. CP at 104-106, 130, 195(8), 197(6). Hoff did not specify what the activities were or when the Employer provided services for this particular client. CP at 106. Nor did she call the issue with the former client to her Employer's attention because the Employer "had already done the work" so "the client wasn't around." CP at 106.

Following the administrative hearing, the ALJ affirmed the Department's Determination Notice, concluding that Hoff failed to establish she had good cause to quit for any of the 11 exclusive reasons set forth in RCW 50.20.050(2)(b). CR at 197(5-7). The ALJ noted that Hoff did repeatedly discuss her unhappiness with what she was earning with her Employer, but that did not give her good cause for quitting for purposes of unemployment benefits. CP at 197(8).

Hoff petitioned the Department's Commissioner to review the ALJ's Initial Order. CP at 204-209. In a final decision, the Commissioner adopted the ALJ's findings of fact and conclusions of law and affirmed the ALJ's Initial Order. CP at 214-15.

Hoff petitioned the Commissioner to reconsider the final decision. CP at 219-224. The Commissioner denied that petition. CP at 227. Hoff filed a petition for judicial review. CP at 58-75. Snohomish County Superior Court Judge Linda Krese denied Hoff's petition and affirmed the Commissioner's final decision. CP at 5-7. Hoff appealed. CP at 1-4.

#### IV. STANDARD OF REVIEW

The standard of review is particularly relevant in this appeal, a matter on judicial review of the Commissioner's Decision under chapter 34.05 RCW, the Washington Administrative Procedure Act (APA). *See Safeco Ins. Cos. v. Meyering*, 102 Wn.2d 385, 389, 687 P.2d 195 (1984). Although Hoff appeals from the superior court order affirming the Commissioner's decision, an appellate court "sits in the same position as the superior court" and reviews the Commissioner's decision, applying the APA standards "directly to the record before the agency." *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993); *Employees of Intalco Aluminum Corp. v. Emp't Sec. Dep't*, 128 Wn. App. 121, 126, 114 P.3d 675 (2005) ("The appellate court reviews the findings and decisions of the commissioner, not the superior court decision or the underlying ALJ order."); RCW 34.05.558.

The Court reviews the decision of the Commissioner, not the underlying decision of the ALJ—except to the extent the Commissioner's

decision adopted any findings and conclusions of the ALJ's order. *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010); *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993). The Commissioner adopted all of the ALJ's Findings of Fact and Conclusions of Law in this case. CP at 214.

The APA directs the Court to affirm the Commissioner's decision if supported by substantial evidence and in accord with the law. RCW 34.05.570(3). The Commissioner's decision is *prima facie* correct, and the burden of demonstrating its invalidity is on the appellant. RCW 50.32.150; see *Eggert v. Emp't Sec. Dept.*, 16 Wn. App. 811, 813, 558 P.2d 1368 (1976) (judicial review is "further limited by RCW 50.32.150"). Thus, upon review of the entire record, the Court, in order to reverse, must be left with the definite and firm conviction that a mistake has been made. *Eggert*, 16 Wn. App. at 813.

The Court reviews the Commissioner's findings of fact for support by substantial evidence. *William Dickson Co. v. Puget Sound Air Pollution Control Agency*, 81 Wn. App. 403, 407, 411, 914 P.2d 750 (1996). Evidence is substantial if sufficient to "persuade a fair-minded person of the truth of the declared premises." *Heinmiller v. Dep't of Health*, 127 Wn.2d 595, 607, 903 P.2d 433 (1995). Evidence may be substantial enough to support a factual finding even if the evidence is

conflicting and could lead to other reasonable interpretations. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713, 732 P.2d 974 (1987). The reviewing court should “view the evidence and the reasonable inferences therefrom in the light most favorable to the party that prevailed” at the administrative proceeding below, which was the Department. *Tapper*, 122 Wn.2d at 407. Additionally, the court may not substitute its judgment for that of the agency on the credibility of the witnesses or the weight to be given to conflicting evidence. *Smith*, 155 Wn. App. at 35; *Davis v. Dep’t of Labor & Indus.*, 94 Wn.2d 119, 124, 615 P.2d 1279 (1980). Unchallenged findings are treated as verities on appeal. *Id.*

A court reviews the law *de novo* under the clear error standard. *Verizon NW, Inc. v. Emp’t Sec. Dep’t*, 164 Wn.2d 909, 915, 194 P.3d 255 (2008). It accords substantial weight to an agency’s interpretation of a law within the agency’s area of expertise. *Id.* Indeed, the courts may not reverse the Commissioner’s decision simply by weighing the evidence differently than the Commissioner or disagreeing with his conclusions. *Eggert*, 16 Wn. App. at 813.

The Commissioner determined Hoff was ineligible for unemployment benefits because she failed to prove by a preponderance of the evidence that she had good cause to quit for any of the 11 exclusive circumstances that constitute good cause to quit under

RCW 50.20.050(2)(b). CP at 197(5-8), 214. Whether a claimant had good cause to quit is a mixed question of law and fact. *Terry v. Dep't of Emp't Sec.*, 82 Wn. App. 745, 748, 919 P.2d 111, 114 (1996). When reviewing a mixed question of law and fact, the court must make a three-step analysis. *Tapper*, 122 Wn.2d at 403. First, the court determines which factual findings below are supported by substantial evidence. *Id.* Second, the court makes a de novo determination of the correct law, and third, it applies the law to the facts. *Id.*

On appeal, it is Hoff's burden to establish the Commissioner's decision was in error.<sup>4</sup> RCW 34.05.570(1)(a); *Smith*, 155 Wn. App. at 32. Hoff must therefore show that the Commissioner's conclusion that the evidence she put forth did not amount to good cause to voluntarily quit her job was a clear error of law.

## V. ARGUMENT

### A. **The Commissioner Properly Concluded Hoff Failed to Prove She Had Good Cause to Quit Her Job at David G. Zimmar's Law Office.**

This Court should affirm the Commissioner's decision because Hoff failed to carry her burden of proving she quit for good cause.

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<sup>4</sup> Under RAP 10.3(h), Hoff, as "respondent who is challenging an administrative adjudicative order under RCW 34.05[,] . . . shall set forth a separate concise statement of each error which a party contends was made by the agency issuing the order, together with the issues pertaining to each assignment of error."

The Employment Security Act was enacted to provide compensation to individuals who are “involuntarily” unemployed “through no fault of their own.” RCW 50.01.010; *Tapper*, 122 Wn.2d at 408. That Act requires that the reason for the unemployment be external and apart from the claimant. *Cowles Publ’g Co. v. Dep’t of Emp’t Sec.*, 15 Wn. App. 590, 593, 550 P.2d 712, 715 (1976). Accordingly, a person is ineligible to receive unemployment benefits when she leaves her employment voluntarily without good cause. RCW 50.20.050(1).

If an individual left work voluntarily, RCW 50.20.050(2)(b)(i)-(xi) sets out an exclusive list of 11 factual circumstances that constitute good cause, and WAC 192-150 sets out what must be established to demonstrate that one of those provisions apply. The employee bears the burden of establishing facts amounting to “good cause” by a preponderance. See RCW 50.32.150; *Wallace v. Emp’t Sec. Dep’t*, 51 Wn. App. 787, 790, 755 P.2d 815 (1988). Failure to show good cause results in disqualification of benefits.<sup>5</sup> RCW 50.20.050(2)(a).

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<sup>5</sup> In her opening brief, Hoff refers to an earlier decision involving Bonnie’s Eastside Cleaning. Appellant’s Opening Br. at 5. That decision is not before the Court. Rather, the decision before the Court involved Hoff’s decision to voluntarily quit her job at David G. Zimmar’s law office in October 2009 and her eligibility for unemployment benefits from that point forward. CP at 154, 160.

There is no dispute Hoff voluntarily quit her job on October 1, 2009. CP at 96. The issue before the Court is whether Hoff had good cause to quit her job under RCW 50.20.050(2).

Here, the Commissioner determined Hoff's reasons for quitting did not fall within any of the 11 exclusive reasons in RCW 50.20.050(2)(b). CP at 197(5-8). Rather, Hoff quit for reasons that simply did not rise to the level of "good cause" under the Act. CP at 197(8).

Hoff argues on appeal that five of the 11 circumstances that constitute good cause for quitting apply to her case: illness (RCW 50.20.050(2)(b)(ii)); reduction of her usual compensation and hours by 25 percent or more (RCW 50.20.050(2)(b)(v) and (vi)); illegal activities in the worksite (RCW 50.20.050(2)(b)(ix)); and changes to her usual work that violated her religious convictions (RCW 50.20.050(2)(b)(x)).

If a claimant quit work due to a change in working conditions that meets the requirements of RCW 50.20.050(2)(b)(v) through (x), the Department will not deny benefits solely on the basis that the claimant continued working for a "brief period of time" following the change. WAC 192-150-145(1). However, the claimant must demonstrate to the Department that the change in working conditions was the *motivating factor* for quitting work. *Id.* "Brief period of time" means the amount of

time a reasonably prudent person would have continued working after the change in circumstances. WAC 192-150-145(2).

For the following reasons, the Commissioner properly determined Hoff failed to prove she quit for any of the five circumstances raised in her appeal. Even if she proved that there were changes in her working conditions at some point during her employment at David G. Zimmar's law office, she nevertheless failed to prove she quit within a reasonable period of time following those changes. Her hours were allegedly reduced in March 2009 when she received a pay raise, her Employer yelled at her once in May 2009, and she did not provide a date or description of the former client's illegal activities. She did not quit until October 2009. The Commissioner's decision should therefore be affirmed.

**1. Hoff did not prove she quit because of an illness.**

Hoff argues she had good cause to quit due to an illness (involuntary eyelid spasms) brought about by work-related stress. Appellant's Opening Br. at 15. The Commissioner, however, correctly concluded Hoff did not tell her Employer that she had stress-induced eyelid spasms or request a leave of absence in order to address the condition. CP at 197(6). Additionally, she did not establish that she quit primarily due to eyelid spasms or that such spasms made it necessary to

quit work. She therefore failed to prove good cause for quitting under RCW 50.20.050(2)(b)(ii).

A person has good cause to quit if the separation was “necessary because of the illness or disability of the claimant,” RCW 50.20.050(2)(b)(ii), and if she left work *primarily* because of such illness. WAC 192-150-055(1)(a). “Necessary” means that “the conditions are of such degree or severity in relation to [the employee’s] particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.” WAC 192-150-055(4)(c). Additionally, the person first must have exhausted all reasonable alternatives prior to leaving work, including requesting a leave of absence and notifying her employer of the reason(s) for the absence as well as asking to be reemployed when she is able to return to work. RCW 50.20.050(2)(b)(ii)(A); WAC 192-150-055(1)(c)(i) – (ii). A person is excused from failing to exhaust reasonable alternatives prior to leaving work only if she can show that doing so would have been a futile act. RCW 50.20.050(2)(b)(ii)(A); WAC 192-150-055(3).

**a. Hoff did not quit primarily because of an illness.**

Hoff failed to satisfy the first requirement of RCW 50.20.050(2)(b)(ii) that required her to demonstrate, as a threshold matter, that her “illness” was the *primary* reason she quit her job. *See*

WAC 192-150-055(1)(a). Rather, the record established Hoff decided to abruptly quit on October 1, 2009, following a conversation with her Employer that morning in which the Employer agreed to pay for Hoff's parking fees up front rather than reimbursing her at a later date. CP at 121, 138. In a note she left for her Employer, Hoff apparently stated she was still displeased with the amount she was being paid and that she quit. CP at 94, 96, 100, 113-14, 121-22, 196(12).

Thus, Hoff's primary reason for quitting was not an illness but dissatisfaction with her pay. CP at 197(8). Hoff's reason was not one of the exclusive reasons set out in RCW 50.20.050(2)(b) and therefore did not give her statutory good cause to quit. *See Davis v. Emp't Sec. Dep't*, 108 Wn. 2d 272, 276, 737 P.2d 1262 (1987) (recognizing that an employee might have compelling personal reasons to leave even very satisfactory employment, such as seeking an education or a better climate, or moving closer to friends and relatives, but the Legislature has chosen not to include such reasons in the good cause exception).

**b. Hoff did not prove her illness made it necessary for her to quit.**

Hoff also did not demonstrate the illness in question made it *necessary* for her to quit. WAC 192-150-055(1)(b). Hoff failed to show an illness made it necessary to quit because the particular circumstances of

her illness were *not* of such degree or severity that they would have caused a reasonably prudent person acting under similar circumstances to quit work. *See* WAC 192-150-055(4)(c).

Hoff was apparently experiencing involuntary eyelid spasms that she believed were caused by work-related stress from her Employer's yelling. CP at 102-103, 192. She claimed her optometrist told her to quit because of the spasms. CP at 103. However, the record established that Hoff's optometrist recommended "warm compresses and stress reduction" to address the spasms, not to quit her job. CR at 192; *see In Re Bergman*, Emp't Sec. Comm'r Dec. 2d 455 (1978) (noting "Chief Psychologist, Ph.D.," stated in medical statement that claimant was "unable to work at his particular job") and *In Re Miller*, Emp't Sec. Comm'r, Dec. 2d 704 (1982) (recognizing claimant's doctor "strongly advised [claimant] to terminate his employment [as director of the medical clinics] for health reasons" after "prolonged continued counseling sessions").<sup>6</sup> Thus, under the above circumstances, Hoff did not establish that it was medically necessary for her to quit on October 1, 2009.

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<sup>6</sup> Commissioner precedential decisions are persuasive authority for the Court. *Martini v. Emp't Sec. Dep't*, 98 Wn. App. 791, 990 P.2d 981 (2000). Copies of *Bergman* and *Miller* are attached for the Court's reference.

**c. Hoff did not exhaust any reasonable alternatives before she quit.**

Hoff also failed to establish that she first exhausted all reasonable alternatives prior to quitting. RCW 50.20.050(2)(b)(ii)(A); WAC 192-150-055(1)(c); CP at 197(6-7). The record established Hoff never notified her Employer of any medical issues prior to quitting. 50.20.050(2)(b)(ii)(A); WAC 192-150-055(1)(c)(i); CP at 108-109, 126, 130. Nor did Hoff ask for a leave of absence before quitting. 50.20.050(2)(b)(ii)(A); CR at 108-109, 126, 130.

Accordingly, she failed to establish she exhausted any alternatives prior to quitting. CR at 197(6-7). For the same reasons, Hoff similarly failed to demonstrate that exhausting reasonable alternatives prior to quitting would have been futile. *See* RCW 50.20.050(2)(b)(ii)(A). Thus, the Commissioner properly concluded Hoff failed to prove she had good cause for quitting her job because of an illness, as she failed to meet any of the requirements set forth in RCW 50.20.050(2)(b)(ii) or the Department's interpretative regulation, WAC 192-150-055.

**2. Hoff did not prove that she quit because of a reduction in her usual pay by 25 percent or more.**

Hoff argues that her Employer reduced her "income ability" by 38%. Appellant's Opening Br. at 16. Hoff, however, did not state at her administrative hearing that this was one of reasons she quit her job—

“That’s my reasons: Reduction of hours, yelling, and – and also the issue with the client.” CP at 106. Nor did she present the information set out in her opening brief regarding pay deductions. Appellant’s Opening Br. at 18-20. Thus, the Commissioner did not decide this particular factual question and it is improperly before the Court on appeal. *See* RCW 34.05.558 (“Judicial review of disputed issues of fact . . . must be confined to the agency record for judicial review”).

Nevertheless, to show good cause for quitting work under RCW 50.20.050(2)(b)(v), Hoff was required to demonstrate that employer action caused a reduction in her usual compensation. WAC 192-150-115(3). She failed to do so at her administrative hearing. Rather, the evidence at the hearing established Hoff received a *raise* of \$50 per week in March 2009 and that her Employer did not reduce Hoff’s usual pay at any point before she abruptly quit in October 2009. CP at 116, 119-20, 135. Thus, Hoff did not have good cause to quit under RCW 50.20.050(2)(b)(v).

**3. Hoff did not prove she quit because of a 25 percent reduction of her usual hours.**

Hoff argues she had good cause to quit due to a reduction in her usual hours by 25 percent or more pursuant to RCW 50.20.050(2)(b)(vi). Appellant’s Opening Br. at 16. The Commissioner, however, correctly

concluded that Hoff failed to prove her Employer cut her hours, recognizing that “if she worked [less], she did so of her own accord.” CP at 197(5).

To establish good cause under RCW 50.20.050(2)(b)(vi), employer action must have caused the reduction in the employee’s usual hours by 25 percent or more, and the claimant quit within a brief period of time because of the reduction. WAC 192-150-120(2); WAC 192-150-145(1), (2).

Here, Hoff did not provide any competent evidence that her Employer reduced her usual hours by any amount, let alone 25 percent or more. Rather, the Commissioner found more credible the Employer’s testimony that according to the terms of their employment relationship, Hoff was allowed to dictate her own hours on the four days of the week that the Employer was in the office, as long as she came in each of those days and got the work done. CP at 116-17, 143-44, 195(2). Thus, Hoff’s usual hours varied. The Employer never implemented any change in Hoff’s working conditions that resulted in a reduction in those hours.

Furthermore, Hoff did not prove that the motivating factor behind her decision to quit was a reduction in her usual hours. Instead, she abruptly quit because she was dissatisfied with what her Employer was paying her. CP at 94, 96, 100, 113-14, 121-22, 197(8). Nor did she quit

within a brief period of time following the alleged hour reduction in March 2009. CP at 95. Rather, she worked for the Employer for seven more months. CP at 95, 100-101, 197(5). Accordingly, Hoff did not establish good cause for quitting under RCW 50.20.050(2)(b)(vi).

**4. Hoff did not prove that she quit because of illegal activities in the worksite.**

Hoff argues she quit due to illegal activities in her worksite. Appellant's Opening Br. at 15. The Commissioner, however, correctly concluded Hoff "did not bring to the Employer's attention the one occasion on which she found a client's behavior shocking." CP at 197(6).

To establish good cause for quitting work under RCW 50.20.050(2)(b)(ix), a claimant must establish, as a threshold matter, the existence of a "clear statutory violation" of civil or criminal law. *Martini v. Emp't Sec. Dep't*, 98 Wn. App. 791, 798, 990 P.2d 981 (2000); WAC 192-150-135(1).

In the event the claimant establishes a clear statutory violation, the claimant must next establish that the illegal activities occurred in the employee's worksite, that she 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)(b)(ix) The illegal activities must have been

the motivating factor behind the claimant's decision to quit. WAC 192-150-145(1), (2).

Here, Hoff failed to meet the threshold requirement of showing the existence of a clear statutory violation of law that would have provided her with good cause to quit. Rather, without providing any details, Hoff testified she was shocked about the activities of one of her Employer's former clients at some point in the past. CP at 104-106.

Hoff also failed to demonstrate the unidentified illegal activities occurred in her worksite. Indeed, the alleged "illegal activities" were performed by a former client, presumably before that client had retained Hoff's Employer for legal services. CP at 104-106, 130. Accordingly, those activities would not be of the kind Hoff could have relied upon for good cause to quit her job.

Finally, Hoff also failed to prove she reported the alleged, unidentified illegal activities to her Employer to give him a reasonable period of time to end such activities, as required by RCW 50.20.050(2)(b)(ix). Rather, in Hoff's words, the Employer "had already done the work for the former client" so "the client wasn't around." CP at 106. Even so, Hoff did not quit within a brief period of time of learning of the former client's "shocking" activities. Nor did she show that those remote and vague activities were the motivating factor that

caused her to quit. Thus, Hoff did not establish good cause for quitting under RCW 50.20.050(2)(b)(ix).

**5. Hoff did not prove that she quit due to changes in her usual work that violated her religious convictions.**

Hoff argues her Employer's yelling violated her religious convictions. Appellant's Opening Br. at 15-16. The Commissioner, however, properly concluded Hoff only proved that her Employer yelled at her once and that Hoff failed to bring the issue of yelling to her Employer's attention in an effort to resolve the matter. CP at 197(6).

To establish good cause for quitting under RCW 50.20.050(2)(b)(x), a claimant must prove, as a threshold matter, that her employer changed her usual work. WAC 192-150-140(2)(a). "Usual work" generally refers to an employee's job duties and conditions. WAC 192-150-140(1). The claimant must also establish that the work, post changes, required her to violate her religious beliefs and that she notified the employer of the violation, unless doing so would be futile. WAC 192-150-140(2)(b), (c). Mere disapproval of the Employer's method of conducting business is not good cause for leaving work. WAC 192-150-140(2)(b). Finally, the new job duties or conditions must have been the motivating factor behind the claimant's decision to quit. WAC 192-150-145(1), (2).

Here, Hoff did not meet any of the requirements of RCW 50.20.050(2)(b)(x) or WAC 192-150-140. First, Hoff did not establish in what way one instance of yelling violated her religious convictions or sincere moral beliefs. RCW 50.20.050(2)(b)(x). Second, her Employer's yelling was not a change in her usual work duties and conditions. WAC 192-150-140(2)(a). Rather, the Commissioner specifically found Hoff only described one instance where the Employer yelled at her that occurred several months before she quit in May 2009. CP at 195(6), 197(6). The Employer did so after learning Hoff had entered his office to view his calendar to find out where he had gone on vacation. CP at 127-29, 195(6). The Employer never changed Hoff's work to include duties or conditions that violated Hoff's religious beliefs.

Additionally, the Commissioner specifically found Hoff "failed to establish . . . that she brought the issue of yelling to the employer's attention in an effort to resolve the matter." CP at 195(7), 197(6); WAC 192-150-140(2)(c). In doing so, the Commissioner deemed the Employer's testimony that Hoff "never" discussed yelling with him before she quit (CP at 126) more credible than Hoff's testimony, where she claimed to have given her Employer a note in early August 2009 that stated she "[did not] like being yelled at" (CP at 108). CP at 195(7), 214.

Hoff therefore failed to carry her burden of showing she notified

her Employer that yelling violated her religious beliefs to enable the Employer to address the issue before she quit. CP at 126; *see also State v. Armenta*, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997) (“In the absence of a finding on a factual issue we must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue.”). Nor did Hoff establish the Employer’s yelling was the motivating factor for quitting her job. Thus, Hoff did not establish good cause for quitting under RCW 50.20.050(2)(b)(x).

**B. Hoff is Required to Repay the Overpayment of Regular Benefits Unless the Commissioner Waives It.**

The Commissioner properly ordered that Hoff was “not at fault in causing the overpayment but is required to repay the regular overpayment . . . in the amount of \$119.”<sup>7</sup> CP at 215.

An individual who is paid any amount as benefits under Title 50 to which she is not entitled shall, unless otherwise relieved pursuant to RCW 50.20.190(2), be liable for repayment of the amount overpaid. RCW 50.20.190(1); WAC 192-220-017(1). The Department shall issue a

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<sup>7</sup> Without citing any authority, Hoff asserts she is entitled to receive compensation for fees incurred for extreme hardship. Appellant’s Opening Br. at 14. Pursuant to RCW 34.05.574, however, “[t]he court may award damages, compensation, or ancillary relief *only to the extent expressly authorized by another provision of law*” (emphasis added). Hoff also alludes to a garnishment issue. Appellant’s Opening Br. at 6. The Department is authorized to garnish wages to satisfy an overpayment assessment. RCW 50.20.190(3). While that apparently occurred, the garnishment issue would have arose following the issuance of an overpayment assessment from which Hoff would have had separate appeal rights. It is not an issue for the Court to address in this case.

written overpayment advice of rights setting forth the reasons for and the amount of the overpayment. *Id.*; WAC 192-220-010, -015. The overpayment advice of rights includes an explanation that if the claimant is not at fault, the claimant may request a waiver of the overpayment. WAC 192-220-010(1)(f).

The Commissioner may waive an overpayment if the Commissioner finds that the overpayment was not the result of fault attributable to the individual *and* that the recovery thereof would be against equity and good conscience. RCW 50.20.190(2); WAC 192-220-017(2).

Here, the Commissioner found Hoff was overpaid \$119 in regular benefits. CP at 215. The Commissioner further determined Hoff was not at fault in causing that overpayment but was still required to repay it. CP at 215. The Commissioner did not explicitly address whether recovery of the overpayment would have been against equity and good conscience. CP at 215. However, given the small amount of benefits at issue, it is implicit within the Commissioner's finding that it would not have been against equity and good conscience to require Hoff to repay the \$119 overpayment of regular benefits. CP at 215.

**C. Hoff is Required to Repay the Overpayment of Conditional Benefits.**

The Commissioner properly ordered that Hoff “is liable for the refund of conditional benefits . . . in the amount of \$5,661” because overpayments of conditional benefits may not be waived. CP at 215.

A claimant is not eligible for a waiver of an overpayment when the overpayment is the result of a conditional payment of benefits. WAC 192-220-017(3)(c). A “conditional payment” is a payment issued to a claimant after she has already received benefits but during a period in which the Department questions her continued eligibility for benefits. WAC 192-100-070(1). A claimant’s right to retain such payments is conditioned on the Department’s finding that she was eligible for benefits during the week(s) in question. *Id.*

Hoff received conditional payments in the amount of \$5,661 after the Department informed her on or about October 19, 2009, that there was a question about her eligibility for benefits. CP at 180. That question was resolved by Determination Notice dated February 16, 2010. CP at 165, 168. Following Hoff’s administrative appeals, the Department’s Commissioner ultimately concluded Hoff was not eligible for benefits beginning the week she quit because she voluntarily quit without good

cause. CP at 214. Therefore, the Commissioner properly determined Hoff is required to pay back the benefits conditionally paid to her following her disqualifying quit. CP at 215.

Although repayment of conditional benefits cannot be waived, Hoff can contact the Department to arrange a payment plan, or to make an offer of compromise to pay an amount less than the full amount owed. RCW 50.24.020; WAC 192-230-110, -130.

## VI. CONCLUSION

Although Hoff received a raise in March 2009, she quit her job because she was still dissatisfied with her pay, a condition to which she agreed when she was hired, and a factor that does not amount to good cause under the Employment Security Act. She did not establish that she quit for any of the 11 qualifying reasons under RCW 50.20.050(2)(b). Accordingly, the Department respectfully requests that the Court affirm the Commissioner's decision denying Hoff's unemployment benefits.

RESPECTFULLY SUBMITTED this 2 day of July, 2012.

ROBERT M. MCKENNA  
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Assistant Attorney General  
WSBA No. 34305  
Attorneys for Respondent

**PROOF OF SERVICE**

I, ROXANNE IMMEL, hereby state and declare as follows:

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

2. That on the 2nd day of July, 2012, I caused to be served a true and correct copy of RESPONDENT'S BRIEF, by U.S. Mail, postage prepaid to:

MELODIE HOFF  
1817 214TH ST. SW  
LYNNWOOD, WA 98036-7930

Original and one copy delivered via ABC Legal Messenger to:

RICHARD D. JOHNSON, CLERK  
COURT OF APPEALS, DIVISION I  
ONE UNION SQUARE  
600 UNIVERSITY STREET  
SEATTLE, WA 98101-1176

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

DATED this 2nd day of July, 2012, in Seattle, Washington.



Roxanne Immel, Legal Assistant