

69736-6

March 29, 2013

69736-6

NO. 69736-6-1
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION 1

Mohamed Abdelkadir

Appellant,

Vs.

STATE OF WASHINGTON DEPARTMENTS OF EMPLOMENT SECURITY,

Respondent.

2013 MAR 29 PM 1:55
COURT OF APPEALS
STATE OF WASHINGTON
DIVISION 1

APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Sharon Armstrong, Judge

BRIEF OF APPELLANT

Address:
One Union Square
600 University, Street
Seattle, WA 98101-4170
(206) 464-7750

Mohamed Abdelkadir
PO Box 25794
Seattle, WA 98165
Appellant
Pro se
(206) 778-1983

Address:
April Benson Bishop WSBA # 40766
Assistant Attorney General For Respondent
800- 5th Avenue, Suite 2000
Seattle, WA 98104-3188
PH: (360) 586- 2644

March 29, 2013

CASE # 69736-6-1APPEAL BRIEF FOR PETITIONER.

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CASE # 69736-6-1 APPEAL BRIEF FOR PETITIONER.

Mohamed Abdelkadir, App. Vs. STATE OF WASHINGTON DEPARTMENTS
OF EMPLOMENT SECURITY, Respondent.

Kathleen M. Lovejoy Administrative Law Judge Hearing entered the ruling on January
27, 2012

Office Of Administrative Hearings

2420-Bristol Court SW

PO Box 9046

Olympia, WA 98507-9046

See **page** 139 of 251 (OAH DECISION) the Commissions Rec. for more information.

Judge Sharon Armstrong King County Superior Court judge the ruling entered on
November 30, 2012.

1. LAW (STANDARD OF REVIEW)

**Pursuant to RCW 50.22.130, the training benefits program
should be available for those unemployed whose skills are no
longer in demand.**

**Exhausted Reasonable Measures, Please See JOB SEARCH
LOGS,**

See page 213 of 251 of the transcript testimony for more information.

Training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when the individual is dislocated worker as defined in RCW 50.04.75. The department should waive the deadlines established under this subsection for reasons deemed by the commission to be good cause. As the above statement Mohamed Abdelkadir has a right to receive Training Benefit.

RCW 34.05.434 UNDER THIS RULES AS FOLLOWS:

- (i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding held in default in accordance with this chapter

Pursuant WAC 192.04.040

In all cases adjudicated under Title 50 RCW the employment security department is an interested party.

(1) Other interested parties in benefit appeals are:

- (a) The claimant;
- (b) Any employer entitled to notice under WAC 192-130-060; and
- (c) An interested employer as defined in WAC 192-220-060 in cases

involving the recovery of benefit

II. FACTS

Two Issues (a) Commission Approved Training Docket No. 01-2011-25297

(b) Training Benefit Docket No. 01-2011-25298

The Benefit Year Ending Date of February 13, 2010, While Appealing To The Court My Case.

I disagree with commission's decision, Reasons as follows:

The Commission on 2009 denied me, Mohamed Abdelkadir, benefits.

1) I, Mohamed Abdelkadir, **APPEAL** THE DECISION TO STATE OF WASHINGTON KING COUNTY **SUPERIOR COURT. NO. 09-2-33625-3SEA.**

2) I, Mohamed Abdelkadir, **APPEAL** IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION 1. **NO 65402-1**

ORDER, it is here by ordered that the Commission's decision in Mr. Abdelkadir **case is reversed**, and he is determined to be eligible for benefits on December 3, 2010.

3) Also, when the matter was settled on December 12, 2010, I did not receive for training benefit "dead line" such as 90 days or 60 days.

4) I, Mohamed Abdelkadir learned on October 14, 2011, when I was denied by Unemployment Security Department for the training benefit dead line.

See pages 94, 95, 96, 97 of 251 of the transcript testimony for more info.

5) The opposing part's counsel (Kathleen Cowsert-representative for CSK Auto inc) appeared at the hearing on January 23, 2012, and in the discussion with the Judge, recognized that party still had an interest in the case.

See page 17 of 251, line 1 through 25 of the transcript testimony.

Then the opposing part (Kathleen Cowsert) did not appear on January 27, 2012, therefore, I should win by default.

6) On January 23, 2012 the administrative hearing Judge said (Judge Kathleen M. Lovejoy) during the telephone hearing there is no dead line or such as 90 days or 60 days for the commission approved retraining benefit, since 2009 changed, so there is no dead line to apply for commission approved retaining benefit.

Judge Kathleen M. Lovejoy failed to issue an order of default for the employer representative, because Kathleen Cowsert-employer representative for CSK Auto Inc did not appear for the hearing during the time period on January 27, 2012.

See page 30 of 251, line 1 through 25 of the transcript testimony.

Plaintiff (Abdelkadir) is filing the New York time newspaper for evidence, because TALX represent CSK AUTO Inc in this case.

A History of Complaints (April 4, 2010).

Talx often files appeals regardless of merits," said Jonathan P. Baird, a lawyer at New Hampshire Legal Assistance. "It's sort of a war of attrition.

Wisconsin and Iowa passed laws to curtail procedural abuses that officials said were common in cases handled by Talx. Connecticut fined Talx (pronounced talks) and demanded an end to baseless appeals. New York, without naming Talx, instructed the Labor Department staff to side with workers in cases that simply pit their word against those of agents for employers.

After Mr. Grenier waited three months for a hearing, Wal-Mart did not appear. A Talx agent joined by phone, and then seemingly hung up as Mr. Grenier testified. The hearing officer redialed and left an unanswered message on the agent's voice mail. The officer called Mr. Grenier "completely credible" and granted him benefits.

Talx appealed, claiming that the officer had denied the agent's request to let Wal-Mart testify by phone. (A recording of the hearing contains no such request.) Mr. Grenier won the appeal, but by then he had lost his apartment and moved in with his sister.

Ms. Griess's won benefits at a hearing that Talx and Countrywide skipped, but Talx successfully appealed, saying the Countrywide witness had missed the hearing because of a family death. Later asked under oath if that was true, the witness said, "No,

I, Mohamed Abdelkadir, Declare under the penalty of perjury for the

State of Washington, that the following is true and correct to the best of my knowledge.

I disagree with the Respondent's Brief **INTRODUCTIONS line 16 through 22** as follows:

Cite clerk papers at 76-88 for more information.

The statement provided by Mr. Mckenna and Ms. Bishop was incorrect.

I am dislocated worker and my skill no longer in demand.

Exhausted Reasonable Measures, Please See JOB SEARCH LOGS,

See page 213 of 251 of the transcript testimony for more information.

I, Mohamed Abdelkadir learned on October 14, 2011, when I was denied by Unemployment Security Department for the training benefit dead line.

Mr. Abdelkadir Unemployment Benefit was ended or run out while waiting Court decision on February 13, 2010.

I am respectfully requesting from the ESD to provide a proof of my signature that showing received of the Training Benefit kit.

I am responding to the Respondent's Brief Page 2, line 1 through 18.

Cite clerk papers at 76-88 for more information.

Also I, Mohamed Abdelkadir learned in September 2011 issue VOL.13 No 8 from SCC for the Training Benefit.

See page 159 of 251 of the transcript testimony for more information.

The ESD take side with the Employer and ignoring employee wright.

I am Citizen of the United State of America for over 20 years.

The statement Respondent's Brief on page 5 was not true as follows:

Cite clerk papers at 76-88 for more information.

The Commission was not properly concluded, because Mr. Abdelkadir did not receive training Benefit dead line from Employment Security Department (ESD) such as 60 days, or 90 days in his mail.

The CSK AUTO And their Agency (A History of Complaints (April 4, 2010).

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Connecticut fined Talx (pronounced talks) and demanded an

end to baseless appeals. New York, without naming Talx,

instructed the Labor Department staff to side with workers in

cases that simply pit their word against those of agents for

employers.

On page 7 Respondent's Brief was incorrect AR at 87, I, Mohamed Abdelkadir, Declare under the penalty of perjury for the State of Washington, that the following is true and correct to the best of my knowledge. I said over the telephone hearing on January 27, 2012 received unemployment weekly claim benefit while searching jobs.

I did not said over the telephone hearing on January 27, 2012 received Training Benefit Kit in My mail

On page 8 Respondent's Brief was incorrect from line 18 through 19, Cite clerk papers at 76-88 for more information.

Because I, Mohamed Abdelkadir did not receive notice of the requirement of the Training Benefits programming its unemployment Claims kit in 2009.

I, Mohamed Abdelkadir was denied for Unemployment Benefits in 2009.

I, Mohamed Abdelkadir it took me 2years to reversed the Commission's decision IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON.

On page 9 Respondent's Brief was incorrect from line 13 through 26.

Cite clerk papers at 76-88 for more information.

- (a) I was terminated and received a notice of termination from employment.
- (b) I am eligible, because my unemployment exhausted.
- (c) **Exhausted Reasonable Measures, Please See JOB**

SEARCH LOGS,

See page 213 of 251 of the transcript testimony for more information.

On page 10 Respondent's Brief was incorrect from line 20 through 24.

Cite clerk papers at 76-88 for more information.

RCW 34.05.434 UNDER THIS RULES AS FOLLOWS:

(i) A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding held in default in accordance with this chapter.

I am reminding the court CSK AUTO is my employer, because the CSK AUTO employer, I was denied unemployment benefit during the hearing over the phone, I, Mohamed Abdelkadir appeal the decision on time to the court of Appeal division one in Seattle and the Commission decision was reverse in fever of Mr. Abdelkadir.

See page 201-204 of 251 of the transcript testimony for more information.

On page 11 Respondent's Brief was incorrect from line 11 through 16.
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Pursuant WAC 192.04.040

In all cases adjudicated under Title 50 RCW the employment security department is an interested party.

(1) Other interested parties in benefit appeals are:

- (a) The claimant;
- (b) Any employer entitled to notice under WAC 192-130-060; and
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involving the recovery of benefits.

On page 12 Respondent's Brief was incorrect from line 1 through 5.

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Mr. Abdelkadir is "dislocated worker" and my skill no longer in demand.

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See page 213 of 251 of the transcript testimony for more information.

BRIEF/PET, Cite clerk papers at 26-75 for more information.

BRIEF/PLA, Cite clerk papers at 89–118 for more information.

COURT DECISION/AFFIRMED, Cite clerk papers at 122–124 for more information.

NOTICE OF APPEAL TO COURT OF APPEAL, Cite clerk papers at 126–158 for more information.

III. ARGUMENT:

I, Mohamed Abdelkadir, Declare under the penalty of perjury for the State of Washington, that the following is true and correct to the best of my knowledge. The APP. Requesting the court to review the Respondent's Brief as follows.

I disagree with the Respondent's Brief **INTRODUCTIONS line 16 through 22** as follows:

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See page 213 of 251 of the transcript testimony for more information.

I, Mohamed Abdelkadir, Declare under the penalty of perjury for the State

of Washington, that the following is true and correct to the best of my knowledge.

The Commission's decision was not correct, because, I have not received statutory time limits from the ESD for Training Benefit, when I open for Unemployment benefit in 2009, also, I, Mohamed Abdelkadir was denied for Unemployment benefit By the Commission's in 2009

I disagree with commissioner S. Alexander Liu, because there is no substantial evidence shows I, Mohamed Abdelkadir received documents from the ESD says 60 days and 90 days for training benefit, when I open for unemployment claim in 2009. See page 163 of 251, paragraph 2 of the transcript, commissioner S. Alexander Liu statement for more information.

1) I, Mohamed Abdelkadir, **APPEAL** THE DECISION TO STATE OF WASHINGTON KING COUNTY SUPERIOR COURT. NO. 09-2-33625-3SEA.

2) I, Mohamed Abdelkadir, **APPEAL** IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION 1. NO 65402-1

ORDER, it is here by ordered that the Commission's decision in Mr. Abdelkadir's **case is reversed**, and he is determined to be eligible for benefits on December 3, 2010. Stipulation and joint with drawl of

Appeal/ settlement of action.

See page 201, 202, 203, 204 of 251 of the transcript testimony for more information

3) Also, when the matter was settled on December 12, 2010, I did not receive for training benefit “dead line” such as 90 days or 60 days.

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Judge Kathleen M. Lovejoy failed to issue an order of default for the employer representative, because Kathleen Cowsert-employer representative for CSK Auto inc did not appear for the hearing during the time period on January 27, 2012.

See page 30 of 251, line 1 through 25 of the transcript testimony.

Kathleen Cowsert-employer representative for CSK Auto inc send a letter to the ESD on November 29, 2011 as their usual game, See page 245 of 251 Transcript for more info. See CRABR BRIEF/PET 26-75 for more information.

Plaintiff (Abdelkadir) is filing the New York time newspaper for evidence, because TALX represent CSK AUTO Inc in this case.

A History of Complaints (April 4, 2010). Hampshire Legal Assistance. "It's sort of a war of attrition. Hampshire Legal Assistance. "It's sort of a war of attrition.

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Talx appealed, claiming that the officer had denied the agent's request to let Wal-Mart testify by phone. (A recording of the hearing contains no such request.) Mr. Grenier won the appeal, but by then he had lost his apartment and moved in with his sister.

Ms. Griess's won benefits at a hearing that Talx and Countrywide skipped, but Talx successfully appealed, saying the Countrywide witness had missed the hearing because of a family death. Later asked under oath if that was true, the witness said, "No, it's not."

The Court should use it's own discretions for this case.

We do not have a complete transcript from the prior proceeding, because the transcriber (Jessica Sanford) wrote "inaudible" in many sections. See page 60 of 251, line 1 through 25 of the transcript testimony for more information. Here, just as in the matter of proof of mailing and

reception of documents, perfect procedures would be prohibitively expensive.

I realize this, and I have paid, and worked, on this case for 3 years, which may be more than it's worth. But I do so because I know what is just, and that I should best the retraining benefits.

The ESD keeps repeating that they mailed me the documents in February 2009. But that dose not mean that I received them. If I had, I would have responded.

On the issue of whether I received the documents from ESD, only I know that. My opponent only claims to have placed them in the mail. Whether they mailed them correctly, is not proven. Whether the post office delivered them, they can not know. They could have proved that had they used certified mail, but they did not.

I, in contrast know I did not receive the documents and I consistently attested to this facts. It not fair to atterbute every thing that goes wrong, to a failure on the part of the recipient / claimant, who cannot prove the nonexistence of non-reception of the documents.

That is why the policy of the Talx case is correct, which is to take the claimant at his word. That is what the Superior Court should do here.

I had been meaning to request compensation for my time and expense in trying to correct this injustice, which was no fault of my own. But I ask only for retraining benefits.

Non-reception of unemployment claims kit. Respondent's repeats the claim have mailed a claims kit to me. But the issues are whether I received it, and the fact is that I did not receive unemployment claims kit. Onus of proving a fact is properly placed upon the personal ((or category of persons) who is better able to produce it. {CITE}. Here, where the critical fact is whether a mailing was received, only the sender has the ability to produce proof of reception, via certified mail, or equivalent. For the sender, this task is simple and routine for the receiver, it impossible to prove the non-reception of a mailing, that one does not know has been mailed. This is common sense, which the court may use evidence. That it is impossible to prove the non-occurrence of reception of a mailing does not mean there is no evidence. The attention of the only person who has personal knowledge is competent evidence.

Against this, respondent's proffers only evidence of having mailed the kit. This may be true- appellant does not have the conceit or chutzpah to contest this, because I cite has no personal knowledge. But even, if the respondent's claim to have mailed is taken as absolutely true fact, it is still cannot prove that the appellee received it. Note that this is "cannot", not "does not". Moreover, even if respondent's claim is elevated from "mailing" to "perfect mailing", is still can not prove successful delivery and reception. Only the receiver is competent to attest to non-reception, which I did, only the sender is can able of generating proof of

successful delivery— such as certified mail or a follow-up telephone call— and this the sender chose not to do. Certainty. Where as applicant, as receiver was asked to do the impossible, the lower courts ignored the certainty that mail some times fails. The reasons are myriad, generally cannot be known, and do not matter,. One single error in an address can cause non-reception. Mail often fails even wailed. Perfectly.

If the court adjudicates all disputes over reception against the receivers, then all mail failures will be held against me, though they are no fault on me.

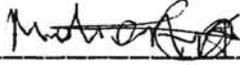
Moreover, ESD mails out thousands if not millions of letters each year. Inevitably, each mailing is less significant and les memorable or the sender than the receivers, who have only their one mailbox to notice and recall.

IV. CONCLUSION

Based upon the above facts and procedural analysis, the ruling of the administrative (ALJ) Judge Kathleen M. Lovejoy On January 27, 2012. And the Commission (ESD) should reverse the decision for reasons. The Court should use it's own discretion for this case. Thank You.

March 29 2013

Very truly



March 29, 2013

Mohamed Abdelkadir Plaintiff Pro se

PO Box 25794

Seattle, WA 98165

(206) 778-1983

ORDER

WHEREFORE. Petitioner asks for judgment:

Based upon the above facts and procedural analysis;

The claimant Mr. Abdelkadir is requesting the Training Benefits legally due to him plus reasonable compensation for the time and expenses he suffered in order to pursue his legal rights in this matter. Thank you

Submitted this ___ day of _____, 2013

Very Truly

Judge

Mohamed Abdelkadir, Pro se

PO Box 25794

Seattle, WA 98165

(206) 778-1983

April Benson Bishop WSBA # 40766

Assistant Attorney General For Respondent

800- 5th Avenue, Suite 2000

Seattle, WA 98104-3188

PH: (360) 586- 2644

March 29, 2013

COURT OF APPEALS DIVISION 1 OF THE STATE OF WASHINGTON

Mohamed Abdelkadir,

Appellant,

Vs.

, STATE OF WASHINGTON DEPARTMENTS
OF EMPLOYMENT SECURITY.

Respondent

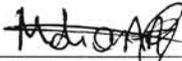
No: 69736-6-1

Plaintiff's Certificate Of Service

I, Mohamed Abdelkadir, declare under the penalty of perjury under the law of the state of Washington that on March 29, 2013 I served a true and correct copy APPEAL BRIEF FOR PETITIONER to Court of Appeal. Division in Seattle Of this documents and attachment documents and Was Mailed Via CERTIFY U.S Mail with proper postage attached to:

Court of Appeal in Seattle
Division 1 one in Seattle
600- University St.
Seattle, WA 98101

April Benson Bishop WSBA # 40766
Assistant Attorney General For Respondent
800- 5th Avenue, Suite 2000
Seattle, WA 98104-3188
PH: (360) 586- 2644



March 29, 2013

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Plaintiff's Certificate Of Service
Case No: 69736-6-1