

NO. 71925-4

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

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 MAR 30 PM 3:29

JONATHAN PEARSON, a single individual,

Appellant,

v.

STATE OF WASHINGTON, a political corporation; and WASHINGTON
STATE DEPARTMENT OF TRANSPORTATION, an agency of the
STATE OF WASHINGTON,

Respondents.

Reply
APPELLANT'S BRIEF

Jonathan Pearson

3315 NW 80th St
Seattle, WA 98117
(206) 557-2387

RECEIVED
COURT OF APPEALS
DIVISION ONE

MAR 30 2015

RECEIVED

MAR 30 2015

ATTORNEY GENERAL OFFICE
SEATTLE

I.

Introduction

At W SF as an on call mate I worked on every vessel and every route and usually shifts that no one else wanted to work on. I was called in the middle of night to pilot fairies in the San Juan Islands and then the next night to start a shift in Bremerton to run the Bremerton ferry throughout the night. When I developed insomnia to the extent that I could not get more than two hours sleep per night. I got involved with a sleep specialist Dr. D'eAndrea who after my first hospital administered test wanted me to take an experimental drug developed by a defense contractor that had some side effects of brain haemorrhaging and wanted me to take another very expensive test in the hospital saying I would be a patient for maybe years. At W SF I got caught between capt. Saffle and Miss Schmidt. which resulted in me being ignored and ostracized by W SF.

1 In his opening statement attorney Liu states that I had a "Master's"
2 position at WSF, which is not true. My position at WSF was as "on call Mate". At
3 the time the pre-termination and termination letters that WSF sent me in 2009
4 where prepared when my son worked for WSF as "Master". My son's hire date
5 is in 1988. My hire date is 1984. Facts that pertain to my son have been
6 attributed to me. The termination letters sent by WSF states my hire date to be
7 in 1988, which is not true. I pointed out these errors and asked that they be
8 corrected many times through out the entire process. Yet even PERC and the
9 MEC have me working as "Master" and hired in 1988 in their respective
10 "findings of fact". Inaccuracies of my hire date and position at WSF, and
11 unwillingness to correct them throughout the process, exemplifies how WSF
12 and the administrative process were neglectful of the actual truth. This lack of
13 concern for facts, and truth is repeated often by WSF in my case. Attachment 1

14
15 Attorney Liu stated I never submitted leave forms. This is not the
16 truth. I had submitted several leave forms, which were present in my personnel
17 and administrative files held by WSF. One of the forms that I submitted was
18 approved by my immediate supervisor, Port Captain Tim Saffle. Attachment 2

19
20 I was in contact, and always available to be in contact, with my
21 immediate supervisor, Port Captain Tim Saffle. Human Resources Port Captain
22 Tim Saffle was WSF management in my chain of command. Port Captain Tim

Attachment 1

AOSS - [Employee Qualifications]

File | Inbox | Planning | Operations | Human Resources | Dispatch | Management Reports | System Administration | Window | Help

Options
 Active Only
 All Employees
 Done
 Add Employee
 Save

Employee	Status	Employee Type
PEARSON, CHERYL L.	Active	Deck Permanent
PEARSON II, JONATHAN D.	Active	On Call Deck
PEARSON, SR, JONATHAN D.	Inactive	On Call Deck
PECKHAM, TERRENCE R.	Active	On Call Deck
PEISCHEL, WILLIAM O.	Active	Relief AB
PELLAND, JAN L.	Active	Deck Permanent

Expired qualification | Qualification will expire within 30 days | Qualification with blank dates

Qualifications | **Employee Info (1)** | Employee Info (2) | Address/Phone | Communications | Comments

Watch	Position	Sequence	Begin Datetime	End Datetime	Assign Type	Begin Date	End Date	Status
On Call Deck	Able Seaman	1	01/01/1998 00:00	00/00/0000 00:00	Permanent	11/04/1999 13:2		Halfie
Seattle - Vashon PD B.	2nd Mate	1	09/26/1999 00:00	10/23/1999 23:59	Temporary	09/27/1999 12:2		clairkey

Bargaining Unit				Seniority			Status History				
Bargaining Unit	Seniority Date	Seq Num	Active	Position	Seniority Date	Seq Num	Employee Status	Inactive Reason	Begin Date	End Date	Status of Change
MM&P	02/10/1993	1	Y	Master	08/27/1996	1	Inactive	LOA - Medical	03/14/2000	00/00/0000	Pending
				Chief Mate	09/10/1993	1	Active		06/16/1984	03/13/2000	Final

Ready

Start | HR Action - Microsoft D... | Session - EXTRA Bundle... | Exploring - G:\AmJen\Ext... | AOSS - [Employee Qu... | RE: HR ONLY on Pearson... | 2:18 PM

Pacific Northwest Maritime Institute



Pacific Division of The Maritime Institute of Technology and Graduate Studies



*Certificate of Advanced Training -- Automatic Radar Plotting Aids
This is to certify that*

Jonathan Pearson

886

has successfully completed a five day course in Automatic Radar Plotting Aids offered by the Maritime Advancement, Training, Education and Safety Program through the Pacific Northwest Maritime Institute, and has demonstrated knowledge and skill in the theory, operation, and use of the Automatic Radar Plotting Aids. The course is approved by the United States Coast Guard and satisfies the International Maritime Organization's recommendations of Resolution A.482 (XII) and Table A-II /1 of the Standards of Training, Certification and Watchkeeping (STCW) Code.

Issued: May 5, 2000

Richard Brooks

Richard Brooks
Instructor

Attachment 2

Did not receive until 2010



Washington State Department of Transportation

Request for Extended Leave

Name JONATHAN PEARSON		Social Security Number 537-40-5513	Organization Code
Address 3315 No. WEST BOM SI	City SEATTLE	State WA	Zip Code 98117
Job Title MATR	Phone Number Where You Can Be Reached During Leave		

Type of Leave Requested

Comp Time Sick Leave Leave Without Pay
 Vacation Leave Shared Leave

Leave Beginning Date: MAY 2001 Anticipated Ending Date: FEB ~~NOVEMBER~~ 2002

If more than one type of leave is checked above, please explain. EMPLOYER would not pay sick leave UNIFORM MEDICA would not pay \$3,000 +/- step first bill

For Payroll Use Only As of _____ this employee has _____ hours of Comp Time, _____ hours of Vacation Leave, _____ hours of Sick Leave, _____ hours of Shared Leave.

Reason for Extended Leave Request

Medical (Give Details. Attach Doctor's note) _____
Jonathan Pearson was seen in this office for a sleep related disorder/see attached notes from Dr G Deandrea -

Personal (Give Details) _____
There are ~~no~~ no doctor's notes attached.

Other (Give Details) _____
Has he returned to work?
No RTW - (yet)

Insurance Coverage

12 Week Family / Medical Lea
 8 Hours of Vacation / Sick Lea
 Self-Pay / COBRA (Contact you
 Other (Give Details) _____

_____ s Office for details)

Jonathan Pearson 11/1/01 Jim C. Sapp 3/8/02
 Employee's Signature Date Supervisor/Manager's Signature Date

1 Saffle told me what I needed to do, and I complied. Lea Schmidt was outside
2 that chain of command, and confusing the issues. She was never an
3 authoritative figure in the chain of command. Attachment 3
4

5 On page 7 of the respondents brief attorney Liu refers to the WSF
6 letter from Mr. Rogers and Mr. Mosley dated April 14, 2009 accusing me of not
7 replying to the December 4, 2008 letter, which is not true. This follows that I was
8 being charged with a violation of the code of conduct for not doing so. I did
9 respond to the letter and therefore was not in violation of the code of conduct.

10 On December 17, 2008 I submitted to Jenny White of WSF what was asked for
11 and who I was directed to contact. I have attached date stamped copies of the
12 documents. In addition, WSFs own letter says that I had complied. Only later
13 WSF decided on different events, as to be able to pursue my termination.

14 Attachments 4 a, b, & c
15

16 Attorney Liu on page 3, last paragraph, states that I submitted a
17 leave form and that "strangely no note was attached". I took this form to the
18 office of Dr. Andrea. The doctors office had the form filled out and faxed to WSF
19 with a note from the Doctor. I have a copy of the fax transmittal of that note. If
20 any note was missing it was misplaced by WSF at WSF. My copy of that note is
21 from the personnel and administrative files I got from WSF.
22

Attachment 3

DEC 10 '03 03:32PM

P. 4/4

3 DEC 03

Dear Captain Saffle,

Thank you for responding to my letter.

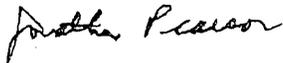
I have explained in phone conversations and our meeting and in my econogram to Ms Schmidt that a major portion of the period from the summer of 2001 was waiting for an appointment with my long-term primary physician who had recommended me to a sleep specialist Dr. Pasqualy. I explained that as a result of conversations with you and a desire to work I made an appointment with a sleep specialist that I could get an appointment with in the shortest possible time. I had tried to get and appointment with my primary physician which would have taken six months or more and I was unable to locate Dr. Pasqualy.

The specialist I saw in the spring of 2001 filled out some paperwork that I submitted to WSF. An appointment was made to evaluate me in the hospital overnight. After the evaluation, this specialist wanted me to take a new drug for two weeks and come back for another evaluation at approximately \$3,000. The insurance I had at that time denied payment of the first evaluation and WSF terminated my insurance. I had doubts about this specialist at my first visit, but went through the procedures because of the pressure from WSF. I later had insights into the reason I was able to get an earlier appointment. So I made an appointment with my primary physician, the earliest appointment was November 26, 2001, I explained to the scheduler the urgency to no avail. I requested that I be called on short notice for any cancellations. I explained this to you and Ms Schmidt over the phone. I also stated that I would do what ever was requested in order to return to work; however I cannot force doctors and medical personnel to give me immediate appointments and fill out obtuse forms. In an effort to comply with your request I contacted the clinic that I had seen in 2001 they said that they had submitted forms previously to WSF and would require another consultation and release of medical records prior to completing the form again.

Dr. Pasqualy was my original Dr. in 1995 (there should be a record of this in dispatch) I made an appointment with him because he was my original Dr. and my primary care physician did not want to review a specialists' test and complete a state form on a patient outside of his scope of practice. In addition I did not know what cooperation I would get from the previous specialists.

Again I am willing and request your help and suggestions in complying with the bureaucratic procedures required to return to work. I also request that I be permitted to use sick leave that I worked for to facilitate these requirements. It would be helpful if you would explained what was wrong with the forms that Dr. DeAndreas' office submitted.

Sincerely
Jonathan Pearson



Attachment 3

70030009

Attachment 4a

RECEIVED
HUMAN RESOURCES
08 DEC 17 PM 3:41

December 15, 2008

David H. Moseley
Assistant secretary for Washington State Ferries

Dear Mr. Moseley:

Please place my name in the active status at Washington State ferries. I have never turned down any work assignment or training request, and have complied with all request for medical information.

Sincerely,
Jonathan Pearson

Jonathan Pearson

MEDICAL CLEARANCE

DATE 12/15/09

REASON FOR DISABILITY: ILLNESS INJURY

DISABLED FOR: WORK ATHLETICS SCHOOL

MAY RETURN TO:

WORK (REGULAR) ON _____ (DATE). SCHOOL ON _____ (DATE).
 WORK (LIGHT) ON _____ (DATE). SPORTS ON _____ (DATE).

RECEIVED
HUMAN RESOURCES

08 DEC 17 PM 3:41

RETURN TO CLINIC ON _____ (DATE), FOR FURTHER EVALUATION.

COMMENTS: Mr. Larson is fit to duty as a Washington State
Trooper back officer.

PHYSICIAN NAME (TYPE OR PRINT): Dyn A

PHYSICIAN SIGNATURE: [Signature]

M.D.

PATIENT NAME Decker, Jonathan
ADDRESS [Address]
NO. 0122 8019



pacific
medical
centers

- Beacon Hill (206) 326-4000
- Lynnwood (425) 744-7153
- Northgate (206) 517-6700
- PMC at 1101 Madison (206) 505-1101
- Renton (425) 227-3700
- Tolem Lake (425) 814-5000
- Women's Medical Specialists (206) 505-1410

White - Health Data Services Canary - Patient Copy Pink - Employer Copy

MR-0004 (Rev. 11/03)

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Washington State
Department of Transportation

Paula J. Hammond, P.E.
Secretary of Transportation

Washington State Ferries
2901 3rd Avenue, Suite 500
Seattle, WA 98121-3014

206-515-3400
TTY: 1-800-833-6388
www.wsdot.wa.gov/ferries

David H. Moseley
Assistant Secretary for
Washington State Ferries

January 20, 2009

Jonathan Pearson
3315 NW 80th Street
Seattle, WA 98117

Dear Mr. Pearson:

We had sent you a letter on December 4th notifying you of our intention to separate you from employment. You responded over the phone to let us know you wanted to keep your employment and even return to work, and wanted to pursue any necessary requirements to do that. You also brought in person your updated Master's license and a doctor's slip with a note of fitness for duty.

At this time, there are several issues in your file that prevent us from considering your possible return to work. This letter will outline those concerns.

First, there are two initial periods of unexcused absences. These are the months from May 1, 2001 through November 26, 2001 and December 2001 to March 2002 (and beyond). We have never received appropriate medical documentation to support your claim of medical treatment or absence of this length, although it was requested on several occasions.

As an example, you had mentioned to Jenny White over the phone that your dentist did receive some paperwork and "filled it out the best he could". Unfortunately this is not adequate to support lengthy absences away from employment. Since you did not satisfactorily address your absences at the time they occurred, we do not anticipate that you could provide medical information that would support these absences at this late date, approximately 7 years later. Therefore, your status of unapproved leave of absence stands at this time.

Also, you have never contacted us to indicate an interest to return to work. It was only in December 2008 that you contacted us in response to our letter of pending separation. As an example, it appears your license was renewed in November 2006, but we received no contact from you indicating an interest to return to work for over two years following your renewal. I am unsure what mitigating circumstance could be brought forth that would explain this lack of contact, if in fact you had wished to return to work.

I invite you to meet with me in person, in the form of a Loudermill Hearing on the following date:

Date, time, location



This would be your opportunity to bring any information that would satisfactorily support both your need for the medical leave of absence as outlined above (May 1, 2001 through November 26, 2001 and December 2001 to March 2002 (and beyond), and bring forth any legitimate reasons of your non-contact with WSF.

If you do not attend this meeting, nor contact us by the date above to seek rescheduling based on mitigating circumstances, we will process your separation from employment effective (date of meeting).

Sincerely,



1 At a hearing with WSF, June 2004, I offered my medical records
2 for WSF to review, WSF did not request or require for me to provide these
3 records. I was willing to provide these records, it is WSF that did not have
4 interest in my medical condition. Attorney Liu's assertion that I would not
5 provide any medical records to WSF is false. Attachment 5

6
7 On page 26, Attorney Liu references Dr. Dym's summation of my
8 medical records from Dr. D'Andrea, which diagnose my condition as sleep
9 deprivation, this is contrary to a previous sleep specialist Dr. Pascualy who
10 diagnosed my condition as sleep apnea. In seeking medical attention I had two
11 sleep specialists, at different times, in common they diagnosed a sleep disorder,
12 that needed to be addressed, but differed in the specific diagnosis. Attachment
13 6

14
15 The sequence of events in the case, are so disjointed, by time and
16 action, that it is implausible that I had due process. Without any progressive
17 discipline hearing, or hearings by right when facing punishment, nor official or
18 stated punishment, "De Facto" suspension occurred. WSF did not communicate
19 with me for years during this punishment. Then after this time transpired, WSF
20 accused me of not being at work and used that as a cause for termination. This
21 is something that WSF had caused, and was the sole authority to remedy.
22

Page 4 notes

TS So how many appts did you have?

JP Don't know

TS So you are continuing to go to him every 3 months?
Because what he puts → he does not state that
you need to be off work for 3-4 months

JP He was going into the future, I wanted him to go
back to the more serious time when I was in
pain & taking antibiotics

TS asked SD if he could talk to him outside
out for about 2 minutes

B Because there is so much that we don't understand
what we have doesn't explain the time period.
Need you to sign a release so our MEO can
talk to your dentist

JP OK and then he asked if he could contact his
dentist

TS asked LS best way to handle

SD Don't want a blank check

TS will need to talk to Dr Jarvis

(we took a caucus)

Came back in JP said I have something to add
about the dentist - referenced a question from 1/29/03 meeting
& question from Mike Manning, why didn't you aggressively pursue
RSD? & he (JP) said something about dental problems in 2003

Attachment 6

THE SLEEP DISORDERS CENTER
PROVIDENCE MEDICAL CENTER
1600 EAST JEFFERSON, SUITE 203
SEATTLE, WASHINGTON 98122
(206) 320-2575
April 11, 1995



Mr. Jonathan D. Pearson
1522 - 28th Avenue West
Seattle WA 98199

SDC: 104090

Dear Mr. Pearson:

You have obstructive sleep apnea syndrome which needs to be treated with a positive airway pressure pump. Individuals with this disorder will have significant difficulty attempting to sleep on rotating schedules or working night shifts. The disturbance of the device adds to the natural difficulty with attempting to move your sleep schedule. I strongly recommend that you maintain a day or swing shift so you can maintain a stable nighttime schedule.

Sincerely,



Ralph Pascualy, M.D.
Diplomate, American Board of Sleep Medicine

Medical Director
Sleep Disorders Center
Seattle, Washington

vh

Attachment 6


1 On page 8 the respondents brief attorney Lui states that I filed with the PERC
2 proceedings on February 12th, 2010, an unfair labor practice complaint. This is
3 incorrect. I filed with the Marine Employees Commission. My case was with the
4 MEC for two years. I presented my case to the MEC, and in those hearings
5 Attorney General Anderson showed aggressive contempt for Commissioner
6 Swanson. The AG prolonged the proceedings to stall, waiting the impending
7 decommission of the MEC. My case was filed and heard and in process with the
8 MEC for two years, and mid process was transferred to PERC, which had a
9 narrower focus of issues. This interrupted and denied my right of due process.

10 Attachment 7

11
12 I have a Freedom of Information request with the U.S. Department of Labor for
13 a copy of their investigation finding that was referred to the Department of
14 Justice. When I receive this case file I request the opportunity to add it to my

15 Brief. Attachment 8

1 well. I do have a question. When was the settlement
2 conference held for this? I have a calendar somewhere
3 but I can't remember.

4 MR. PEARSON: I believe it was September the
5 28th.

6 COMMISSIONER COX: September 28th? Why wasn't
7 this brought up in a settlement conference, Counsel?

8 MR. ANDERSON: Well, you have to understand
9 that, first of all, it's our position that this is not
10 the same as a grievance. And so we don't even -- it's
11 our position that a motion to make more definite, a
12 motion to dismiss, a motion with regards to
13 timeliness. All those things aren't required to be
14 made by the state in a ULP situation until at or
15 before the time you file your answer. And so we don't
16 view it as the same timeliness argument as a grievance
17 where you never file an answer.

18 Frankly, there were -- I was present at
19 that conference and no progress was made. In fact,
20 you may have heard some rumors about my own behavior
21 during that conference --

22 COMMISSIONER COX: No.

23 MR. ANDERSON: -- where I got pretty heated
24 up. But frankly, no progress was made and shortly
25 after that the union withdrew its representation of

Attachment 8

U.S. Department of Labor

January 14, 1991

Certified P471 872 514

VETERANS' EMPLOYMENT AND TRAINING SERVICE
1111 - Third Avenue, Suite 800
Seattle, Washington 98101-3212
(206) 442-4831 FTS 399-4831



Jonathan Pearson
15128th Ave. W.
Seattle, WA 98199

RE: Claimant: JONATHAN PEARSON
File: 99-06255-(31)
Employer: Department of
Transportation, Marine
Division, Washington
State Ferries

Dear Mr. Pearson:

We regret to inform you that the Department of Justice has declined to accept for representation your Veterans' Reemployment Rights case. The Solicitor of Labor for the Seattle Region has advised us that the decision was made on December 5, 1990. Should you wish to do so, you can seek disclosure of your file under the Privacy Act of 1975.

In addition, please be advised that the decision by the U.S. Department of Justice against representation does not preclude employment of private counsel at your own expense if you desire to pursue the matter.

The Department of Labor regrets being unable to bring this matter to a more satisfactory conclusion on your behalf.

Sincerely,

Karen M. Marin
KAREN M. MARIN,
Regional Agent

Attachment

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Conclusion

I respectfully ask the Court to reverse the court's order granting Summary Judgment.

Jonathan Pearson
Jonathan Pearson

Appellant

March 30, 2015