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NO. 71991-2

**COURT OF APPEALS FOR DIVISION 1
STATE OF WASHINGTON**

DONALD BAKER

Petitioner,

V.

APPELLANTS BRIEF FOR
SUPERIOR COURT CASE
NO.13-2-05285-5

STATE OF WASHINGTON
EMPLOYMENT SECURITY
DEPARTMENT

Respondent,

STATE OF WASHINGTON
COURT OF APPEALS
2014 DEC 17 PM 2:39

I. IDENTITY OF MOVING PARTY

I, the petitioner, seek a review by the designated appellate court of the judgment dated 23 April 2014 dismissing my appeal and the denial of reconsideration dated 6 May 2014. I seek the review due to the new evidence presented that contradicts the employer statements and the Superior Courts refusal to accept the new evidence that was not available to me at the time of the OAH hearing, but provided to the Petition for Review and not accepted at the Superior Court hearing.

II. STATEMENT OF RELIEF SOUGHT

The Employment Security Department denied my benefits due to testimony of the employer and for this reason I request the court to allow the new evidence to be entered that contradicts their testimony, so that the correct judgment be made. I also seek a judgment granting benefits and the assessing of a monetary award for the hardship that these proceedings have caused me both physically and mentally.

III. FACTS RELEVANT TO MOTION

MainTech has an attendance policy that states management may consider extenuating circumstances when determining discipline for no call- no shows and has the right to exercise discretion. The supervisor had chosen not to do this, nor confer with Human Resources as to the ramifications this could cause. I feel this was due to the nature of my absence. The Employers rules also state three consecutive no call/no shows are the issue. This has proven to be incorrect for the employers supervisor admitted that due to not reaching him I contacted a co-worker.

This leaves the only other reason, which they state as misconduct due to the arrest that was beyond my control. This still should not have been an issue due the call in. The attendance policy also states that an employee in the absence of the supervisor make notification to the next reporting relationship. There was no next level management provided to us for contact. He handled all paperwork that was to be forwarded, to upper level personnel. I was not provided any upper level personnel to contact in his absence. This in itself is against their company policy. Therefore, MainTechs own attendance policy prevented my ability to adhere to their standards. I did in fact contact a co-worker to relay the message.

On December 12 and 13, I was given half days for personal reasons not relating to the arrest. This was a mutual agreement for I worked the weekend of December 17 and 18 to accomplish task that could not be done during the work week. MainTech failed to provide the timecards or card reader information to show this.

The correct dates, that I was absent due to my arrest were December 19,20, and 21. The arrest date was December 19 and is reflected on the Marysville Courts Findings and Sentence report that I filed with my Petition for reconsideration on December 17, 2012 and Petition For Review on January 10, 2013. I was released on December 21 at 9:30pm.

I called the supervisor (Wittrock) upon my arrival at the Marysville jail, but he did not answer. I then called my co-worker (Thomas), whom I was scheduled to work with on December 19 and informed him of the situation. He assured me the information would be given to the supervisor and it was. Mr. Wittrock admitted this during the OAH hearing to the ALJ Burnett. The judge asked Mr. Wittrock why he did not provide this information in the beginning.

Once released on bail December 21 at 9:30pm bondman (John) notified me that I must check in at opening of business (8:30 am) or the bail would be revoked, so I did. I notified the supervisor at that time that I had been released and at the bond office. I also told him that my arrival at work would be shortly after document signing. He then stated take the day off and come in tomorrow on December 23. This was all before 11:42 am that he stated in the hearing.

The department and its representative state I was a no call-no show on December 20, 21, and 22, which is inaccurate. Again the evidence contradicts their testimony. They also state that I was scheduled to work those days. Once notification was given that I was in jail most management personnel will not schedule anyone until they know your availability. The department also asserts that I only was in jail one day and that is inaccurate.(see attachment 1)

Emails were used as evidence that MainTech produced six months after the separation. None of the emails were created the day/days of the event. They stated that I was arrested for not going to court which is untrue.

The department states I was in jail for thirty days April 6, 2012 to May 6, 2012 and this is due to the ALJ only asking if I ever served time in jail and not if the time was for the charge. I was exonerated by the prosecutor of the charge that deals with this separation.

Furthermore the department states my absences resulted in my discharge from employment and not my incarceration. They do however state that I engaged in criminal activity in which I knew or should have known would lead to my not being able to appear for work. This was stated in the ALJ's **Findings of Fact**. The charge was beyond my control and again I was exonerated through a dismissal of the case.

I did apply for my benefits the same week, due to what Mr. Wittrock told me. This would have been my waiting week. Also if I were wrong about this, I could have pursued day contract labor and worked one day then filed for benefits. This should or could show the fact that if the statement provided to the Department was not true. I could have waited for a day labor contract and then file for benefits.

The department states it later received information that I had been discharged instead, but they failed to admit the inability to contact supervisor, no other chain of command, or the fact that I notified a co-worker and the message was received on December 19, 2011 and not December 21, 2011. I provided this information in my petition for review with the department in the form of the booking statement. Again this shows the effort that I went through to preserve my job.

I. ARGUMENT

I did call in on the 19 December 2014 from the Marysville jail, therefore no call-no show, is not a reason for disqualifying me to receiving benefits or the Company for terminating me. This is why **CIVIL RULE 59(A)(8)** which states the court to reconsider a decision upon a motion by a party asserting that the court made an error of law. I will also argue that once notification is given that I am not available for work, I should have been removed from the schedule. My arrest was beyond my control and with that type of accusation I was going to be arrested guilty or not. I would also stipulate that I provided new evidence in support of my case that contradicts the testimony of the employer that was not available at trial. I will use **CIVIL RULE CR59(A)(4)** which states that newly discovered evidence material for the party making the application, which could not with reasonable diligence have been discovered and produced at trial. Also **WAC192-100-055** which states that if any information or knowledge which a person fails to disclose to the department inadvertently or thru oversight; the Department may allow redetermination an allowance of benefits resulting in non-disclosure at anytime within two years.

I also would submit that if MainTech could not get the dates right of the absences and not report to the department of my call in. Then they also lied about when I called right. Then six months later deny my benefits with emails created six months later. ^{is} They is why **CIVIL RULE CR59(A)(9)** should be used which states substantial justice has not been done.

II. CONCLUSION

For the forgoing reasons, I respectfully request that the Court cancel the Commissioners decision dated May 3, 2013.

Dated ~~July 28, 2014~~
December 14;


Donald Baker. Pro se

PROOF OF SERVICE

I, Donald Baker, certify that I served a copy of the Petitioners ^{Brief}~~Response~~ on all parties or their counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this ~~28th~~ ^{14th} day of ~~July~~ ^{Dec} 2014 in ~~Sacramento, CA~~ ^{Bothell, WA}


Donald Baker, pro se