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**SUPREME COURT
OF THE STATE OF WASHINGTON**

TAMARA LOVE,

PETITIONER,

V.

STATE OF WASHINGTON, EMPLOYMENT SECURITY
DEPARTMENT

RESPONDENT.

**DEPARTMENT'S ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

After Tamara Love failed to appear at her administrative hearing, an administrative law judge found her in default and dismissed her appeal. Love sought review of the default order by the Commissioner of the Employment Security Department, requiring her to show good cause for her failure to appear. WAC 192-04-185(4). However, Love's petition for review did not explain why she missed her hearing. The Commissioner correctly concluded that Love did not establish good cause for missing her hearing and affirmed the default order, as required by Employment Security Department rules.

Applying well-settled precedent in an unpublished decision, the Court of Appeals properly affirmed the Commissioner's final order dismissing Love's appeal. *Love v. Emp. Sec. Dep't*, No. 60190-7-II, 2025 WL 844115 (Wash Ct. App., Mar. 18, 2025) (unpublished). That decision does not conflict with any decision of this Court or any other decision of the Court of Appeals, nor does it involve a significant

constitutional question or issue of substantial public interest.

Further review by this Court is unwarranted. RAP 13.4(b).

II. STATEMENT OF THE ISSUE

Did the Commissioner properly exercise her discretion by affirming a default order when Love offered no explanation for why she did not appear at her administrative hearing?

III. STATEMENT OF THE CASE

A. Love Failed to Appear at a Scheduled Administrative Hearing That She Requested

After the Department determined that Love had improperly been granted unemployment benefits, it issued a determination letter assessing an overpayment to recover benefits that had already been paid to her. Clerk's Papers (CP) 9–15. Love appealed the determination and requested an administrative hearing to contest the overpayment assessment. CP 16.

The Office of Administrative Hearings (OAH) scheduled a telephonic administrative hearing and sent Love a Notice of

Hearing. CP 59–66. The Notice of Hearing provided the scheduled time and date of the hearing as well as instructions for how to call into the hearing. CP 59–60. On the first page, under the bolded heading, “**What happens if I do not call into the hearing,**” the Notice informed Love: “if YOU filed the appeal and you don’t call in, the judge may dismiss your appeal.” CP 59.

The Notice also instructed Love to call OAH as soon as possible if she needed a different hearing date. CP 59. In an attachment to the Notice, under the bolded heading, “**What if I need to reschedule my hearing,**” OAH once again instructed Love to call as soon as possible if she needed to reschedule. CP 62.

OAH held a telephonic hearing on the scheduled date. CP 31. However, Love failed to appear and did not contact OAH to reschedule or otherwise inform OAH that she was unable to attend. CP 31. The administrative law judge (ALJ) waited 15 minutes before entering an order of default dismissing the appeal. CP 31.

B. Love Appealed the Default Order to the Commissioner but Did Not Explain Why She Failed to Appear at the Hearing

OAH sent the order of default to Love, which included instructions on how to move to vacate the default order. CP 32–33. Attached to the order was a form claimants may use to petition the Department’s Commissioner for review. CP 35. In bold and partially underlined text, the form instructed, “**If you failed to attend the hearing, please tell us the reason why.**” CP 35. Love used this form to submit her petition to the Commissioner for review of the default order. CP 39.

Despite the form’s instructions, Love did not explain why she failed to appear at the hearing or request a continuance. CP 39–45. Instead, she addressed the merits of the Department’s original determination, explaining why she should have been eligible for unemployment benefits: “I did a job search, I found a job applied for standby when requested by an ESD rep when I had a phone interview [sic].” CP 39.

C. The Commissioner Affirmed the Default Order Because Love Did Not Explain Why She Missed the Hearing

The Commissioner affirmed the default order, explaining, “Contrary to the clear instructions for filing a Petition for Review set out on the face of the [default order], no reason for claimant’s failure to appear at the duly noted hearing is alleged in the Petition for Review.” CP 48. Accordingly, there was “no basis for a finding that nonappearance was for an excusable reason.”

Id.

Love then petitioned the Commissioner for reconsideration. CP 52–53. Only then did Love assert that illness caused her to miss the hearing. CP 53. However, WAC 192-04-190 authorizes the Commissioner to reconsider a decision if there is clerical error or if the petitioner was denied a reasonable opportunity to present her case. Finding neither, the Commissioner denied Love’s petition for reconsideration. CP 56–57. Love then appealed to the Pierce County Superior Court, which affirmed the Commissioner’s decision. CP 112–15.

Love appealed the superior court's decision to the Court of Appeals, Division Two. The Court of Appeals issued an unpublished opinion affirming the Commissioner's decision. *Love*, No. 60190-7-II, 2025 WL 844115 (Wash Ct. App., Mar. 18, 2025) (unpublished). The court held the Commissioner acted within her discretion when denying Love's petition for review because Love did not provide any reason for missing her administrative hearing. *Id.* at *2.

IV. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny review because the Court of Appeals correctly applied well-settled precedent. There is no conflict with appellate decisions, nor does the case raise any constitutional question or issue of substantial public interest. Love has also failed to properly argue any of the considerations for discretionary review contained in RAP 13.4(b).

A. The Court of Appeals Decision is Consistent with Well-Settled Precedent

The Commissioner did not abuse her discretion, and the Court of Appeals properly applied precedent to affirm the dismissal of Love's administrative appeal.

The Administrative Procedure Act governs judicial review of the Commissioner's decision. RCW 34.05.510; RCW 50.32.120. Under the APA, an ALJ may enter a default order when a party fails to attend an administrative hearing. RCW 34.05.440(2). Under the Department's rule, the Commissioner may set aside a default order only if the petitioner shows good cause for either failing to appear or failing to request a continuance. WAC 192-04-185(4). In precedential decisions, the Commissioner has determined that to establish good cause, the petitioner must demonstrate circumstances that would "effectively deter a reasonably prudent person from appearing." *In Re Shay*, Emp. Sec. Comm'r Dec.2d 970, 2011 WL 8129816, at *2 (Wash. Emp. Sec. Dep't April 29, 2011). Precedential Commissioner's decisions "are to be treated as persuasive

authority by a reviewing court.” *Graves v. Dep’t of Emp. Sec.*, 144 Wn. App. 302, 309, 182 P.3d 1004 (2008) (citing *Martini v. Emp. Sec. Dep’t*, 98 Wn. App. 791, 795, 990 P.2d 981 (2000)).

An administrative decision about whether to set aside a default order is subject to judicial review under an abuse of discretion standard. *See e.g., Graves*, 144 Wn. App. at 309 (citing *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 582, 599 P.2d 1289 (1979)); *Hwang v. McMahonill*, 103 Wn. App. 945, 949, 15 P.3d 172 (2000), *review denied*, 144 Wn.2d 1011, 31 P.3d 1185 (2001). An abuse of discretion is a decision that is “manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *Graves*, 144 Wn. App. at 309.

Here, despite the clear instructions on the form Love used to submit her petition for Commissioner’s review of the default order, Love failed to give any reason explaining why she did not attend the hearing, nor did she request the hearing be continued. CP 39–45. Rather, Love only explained why she believed she should be eligible for unemployment benefits. CP 39.

The Court of Appeals correctly held the Commissioner acted within her discretion. *Love*, 2025 WL 844115 at *2. The Commissioner could not have found good cause because Love failed to provide *any* explanation to establish good cause. *Id.* Love’s petition establishes no conflicts with other appellate decisions or decisions by this Court.

In her Petition for Reconsideration to the Commissioner, Love asserted for the first time that she had missed her administrative hearing because she was sick. CP 53. But a decision to deny reconsideration is not subject to judicial review. *K.S. Tacoma Holdings, LLC v. Shorelines Hearings Bd.*, 166 Wn. App. 117, 124 n.5, 272 P.3d 876 (2012) (quoting RCW 34.05.570(5)); RCW 34.05.470(5) (“An order denying reconsideration . . . is not subject to judicial review.”); WAC 192-04-190(4). Thus, the Court of Appeals correctly did not consider arguments made in Love’s Petition for Reconsideration, nor are they properly before this Court.

Because the Court of Appeals applied well-settled precedent, and Love has provided no authority to show a conflict between decisions from this Court or other Court of Appeals decisions—and the undersigned is aware of none—this Court should deny Love’s petition for review.

B. Love’s Appeal Does Not Involve a “Significant Question” Under the United States or Washington Constitutions

Love asserts that the Court of Appeals decision violates the Constitution because it denies her due process and her right to a jury trial. Petition for Rev. at 6. This is incorrect.

First, due process requires notice and opportunity to be heard. *Fields v. Dep’t of Early Learning*, 193 Wn.2d 36, 44, 434 P.3d 999 (2019); *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). Here, the issuance of a default order after Love failed to appear at a duly noted administrative hearing, and the Court’s decision affirming the default order, does not amount to a denial of due process rights. *See Graves*, 144 Wn. App. at 310–11 (affirming denial of a motion to vacate a default

judgment in the absence of a showing of good cause for failure to attend an administrative hearing).

Regarding Love's request for a jury trial, this is not a civil trial. This is an appeal governed by the APA in which the facts are limited to the agency record and "[j]udicial review of disputed issues of fact shall be conducted by the court without a jury". RCW 34.05.558. Love is not entitled to a jury trial. *See Garcia v. Dep't of Soc. and Health Servs.*, 10 Wn. App. 2d 885, 909, 451 P.3d 1107 (2019) ("In an APA declaratory judgment action, judicial review of disputed facts is conducted by the trial court without a jury and is confined to the agency record"); *see also State v. State Credit Ass'n, Inc.*, 33 Wn. App. 617, 621, 657 P.2d 327 (1983) (constitutional right to jury trial does not apply to "statutorily created actions without common law analogues" (citing *State Bd. of Med. Exam'rs v. Macy*, 92 Wash. 614, 159 P. 801 (1916))).

Because the Commissioner and Court of Appeals conducted well-established, lawful reviews of Love's petitions,

Love's claims for civil liability are not before this Court, and Love has never been entitled to a jury trial at any stage of these proceedings, her petition does not involve a significant question of constitutional law. The Court should deny review.

C. The Remaining Issues Raised by Love Are Not Properly Before the Court

In her petition to this Court, Love raises several other issues and requests for relief. None of them are properly before this Court and, therefore, cannot form a basis for review under RAP 13.4(b).

First, Love asserts several civil claims such as negligence and libel. Petition for Rev. at 4, 7. She also requests attorney fees. *Id.* at 6–7. But this is an appeal of a final agency order; review by the Court is limited to the correctness of the Commissioner's decision. RCW 50.32.040; RCW 34.05.570(3); *see also Campbell v. State Emp. Sec. Dep't*, 180 Wn.2d 566, 571, 326 P.3d 713 (2014). Reviewing courts are limited to the remedies provided in Title 50 RCW. RCW 50.32.180; *see also Wash. Trucking Ass'ns v. State Emp. Sec. Dep't*, 188 Wn.2d 198, 224,

393 P.3d 761 (2017) (holding exclusive remedy provision of the Employment Security Act barred a tortious interference claim brought by an association of employers).

Accordingly, this Court can only affirm, reverse, or modify the Commissioner's decision. *See* RCW 50.32.150 (directing courts to either determine the Commissioner acted within her authority or else reverse or modify the decision). It cannot award damages. *See* RCW 34.05.574(3) ("The court may award damages, compensation, or ancillary relief only to the extent expressly authorized by another provision of law.").

Second, Love argues the merits of her underlying claim for unemployment benefits by alleging the ALJ erred in determining Love engaged in misconduct. Petition for Rev. at 6. However, the ALJ dismissed Love's appeal because she failed to appear. CP 31. Neither the ALJ nor the Commissioner considered the merits of her appeal. CP 31, 48. Because the agency order subject to judicial review under RCW 34.05.570(3) had nothing to do with the merits of her appeal and was based

solely on her failure to show good cause for why she did not attend her hearing, the merits of Love's underlying claim are not before the Court.

Because these arguments are both outside the scope of Love's petition for judicial review and without merit, they do not present grounds under RAP 13.4(b) for the Court to grant review. This Court should deny Love's petition.

V. CONCLUSION

For the foregoing reason, the Court should deny review.

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CERTIFICATION

I certify that this document contains 2234 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 23RD day of May, 2025.

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PROOF OF SERVICE

I, Maritza Sierra, certify that I caused to be served a copy of **Department's Answer to Petition for Review** on all parties on their counsel of record on the date below as follows:

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

DATED this 23RD day of May 2025, in Olympia,
Washington.



MARITZA SIERRA, Paralegal

AGO/LICENSING AND ADMINISTRATIVE LAW DIV

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