

FILED
SUPREME COURT
STATE OF WASHINGTON
4/14/2025 8:00 AM
BY SARAH R. PENDLETON
CLERK

No.: 60190-7

Case #: 1040563

**SUPREME COURT
OF THE STATE OF WASHINGTON**

TAMARA LOVE,

Claimant,

vs.

STATE OF WASHINGTON,
EMPLOYMENT SECURITY DEPARTMENT,

Defendants.

PETITION FOR REVIEW

Tamara Love

PRO SE

WSBA# 29425

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Tacoma, Washington 98422

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A. IDENTITY OF PETITIONER

Tamara Love, Appellant Pro Se asks this court to accept the review of the Court of Appeals decision terminating review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

In the Court's Analysis..." Here, in the filing that challenged the default order, Love failed to provide *any* reason for failing to appear at the hearing. Without any reason for why Love failed to appear, the commissioner had no grounds for determining that Love had good cause for her failure to appear. Thus, the commissioner did not abuse their discretion in denying Love's petition for review of the ALJ's default order."

The Opinion was filed March 18, 2025 and order denying a motion for reconsideration filed on April 10, 2025. A copy of the decision is in the Appendix at pages A-2 through A-5.

However the Court recognized as noted in the facts, "The commissioner affirmed the default order dismissing Love's appeal. Love filed a petition for reconsideration, in which Love finally stated that she "fell ill and did not realize" she had missed the hearing. CP at 53. The petition for reconsideration was denied. Love filed a notice of appeal in the superior court. The superior court affirmed the commissioner's decision." A copy of the order denying petitioner's motion for reconsideration is in the Appendix at page A-6.

C. ISSUES PRESENTED FOR REVIEW

Did the Superior Court err in not granting the motion for a jury Trial? As provided by statute: cases—Exception—Fee—Juror compensation—Jury trials in criminal cases. In all civil cases, the plaintiff or defendant may demand a jury (RCW 3.50.135) and a) Right of Jury Trial Preserved. The right of trial by jury as declared by article 1, section 21 of the constitution or as given by a statute shall be preserved to the parties inviolate (CR 38).

Was the decision court's decision to affirm the denial of the hearing unconstitutional and an error in law? The Claimant asked for reconsideration on appeal and advised of illness. (Page 46 of 59, Administrative Record). Commissioner's Order Denying Petition for Reconsideration states that there was a reasonable opportunity to present oral argument under WAC 192-04-190. The request did not result in the requested appeal. (Page 49 of 59, Administrative Record).

Was Substantial justice not done? Was the publishing an order of misconduct without facts libel? The Commissioner did not present any supporting facts or evidence substantiating the denial of the appeal, upholding Order 27932. Or make a showing that the evidence brought forth under Docket 27932 supported a showing of the preponderance of the evidence under WAC 192-100-065 for Misconduct.

D. STATEMENT OF THE CASE

The Commissioner's Order dismissed the appeal for the claimant's failure to appear (Page 41 of 59, Administrative Record.) The Claimant asked for reconsideration on appeal and advised of illness. (Page 46 of 59, Administrative Record).

Commissioner's Order Denying Petition for Reconsideration states that there was a reasonable opportunity to present oral argument under WAC 192-04-190. The request did not result in the requested appeal. (Page 49 of 59, Administrative Record).

The Commissioner did not present any supporting facts or evidence substantiating the denial of the appeal, upholding Order 27932. Or make a showing that the evidence brought forth under Docket 27932 supported a showing of the preponderance of the evidence under WAC 192-100-065 for Misconduct. Or stated in any way as to how the oral argument supported the employer's appeal for misconduct. There were no facts or analyses enumerated in the Order.

The denial of the request for an appeal has created financial hardship by means of a debt for overpayment which had a negative impact on the distribution of past, present, and future unemployment benefits.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Court should accept review to avoid errors of law and uphold the Constitution of the United States. The Appellant should be granted a new hearing, jury trial and

administrative damages including attorney's fees and court costs.

The appellate court's affirmation of the Commissioner's decisions to deny a new hearing is a violation of the Constitution as it does not provide due process of procedure. Upon realizing the error of not providing information as to why the hearing was missed, the Appellant supplied that information with a Petition. (Page 46 of 59, Administrative Record) It was a violation of statute RCW 3.50.135 for the Superior Court not to grant a jury trial as requested. Even if the Court agrees that the commissioner's decision was not an abuse of discretion; There are conflicting facts stated in Order 27932 (Page 14 of 59, Administrative Record). The appellant supplied all information to show she reacted and acted within the scope of her employment. The result of the affirmation was that Substantial justice was not done and the court could not review the merits of the case which is a violation of substantial due process under the 14th Amendment.

F. CONCLUSION

Justice requires the reversal of the trial court decision with directions to enter judgment declaring that the order of default 308897 is vacated as well as the order 279232 reversing the original determination for misconduct on the grounds that it had no basis in fact. It is further requested that the court order the reinstatement of the original determination award of unemployment benefits as awarded by the Employment Security

Department. As such the Appellant seeks, administrative remedies including undisputed unemployment benefits and interest in the amount of \$2,405.62, Treble damages in the amount of \$25,000, and reasonable attorney's fees and court costs in the amount of \$26,846.

In addition, the court should remand the case for a jury trial and a new administrative hearing, as the Employment Security Department should be responsible for civil liabilities including negligence, libel, and administrative damages; Constitutional violations as well as violations of other state and federal statutes.

[If the petition is prepared using word processing software, include the following statement: This document contains 17,999 words, excluding the parts of the document exempted from the word count by RAP 18.17.]

Date: 4/14/2025

Respectfully submitted,



Signature

Tamara Love

Appellant, Pro Se

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APPENDIX

Unpublished Opinion.	A-2
Order denying Motion for Reconsideration.	A-6
Findings of Facts of Law and Order	A-7

March 18, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

TAMARA LOVE,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT
SECURITY DEPARTMENT,

Respondent.

No. 60190-7-II

UNPUBLISHED OPINION

PRICE, J. — Tamara Love appeals the superior court’s order affirming the decision of the Commissioner of the Employment Security Department. We affirm.

FACTS

On May 12, 2023, the Employment Security Department sent Love a notice of overpayment based on a prior decision denying her benefits for weeks that had already been paid. Love appealed the notice of overpayment. The appeal was scheduled for a hearing with the Office of Administrative Hearings on July 31, 2023.

Love failed to appear at the July 31 hearing and did not request a postponement. The administrative law judge (ALJ) found Love in default, dismissed the appeal, and affirmed the May 12 notice of overpayment. The ALJ’s order included instructions on how to file a motion to vacate the default order and a sample form for the motion to vacate. The form explicitly required an explanation for why the hearing was missed.

Love did not use the form to file the motion to vacate the default order. Instead, Love filed a petition for review, which made allegations related to the underlying decision regarding the denial of benefits but did not provide any explanation for why Love missed the July 31 hearing.

The commissioner found that, despite clear instructions to provide an explanation for her failure to appear, “no reason for claimant’s failure to appear at the duly noticed hearing is alleged in the Petition for Review.” Clerk’s Papers (CP) at 48. Further, the commissioner found “[u]nder the circumstances, we have no basis for finding that the nonappearance was for an excusable reason.” CP at 48. The commissioner affirmed the default order dismissing Love’s appeal.

Love filed a petition for reconsideration, in which Love finally stated that she “fell ill and did not realize” she had missed the hearing. CP at 53. The petition for reconsideration was denied.

Love filed a notice of appeal in the superior court. The superior court affirmed the commissioner’s decision.

Love appeals.

ANALYSIS

Love argues that the commissioner abused their discretion in the order dismissing her appeal.¹ We disagree.

¹ In addition to arguing that the commissioner abused their discretion, Love makes numerous arguments related to the underlying decision denying her unemployment benefits and seeks various remedies (such as damages) for claims that are outside the scope of an administrative review of an agency action. Accordingly, we address only Love’s argument that the commissioner abused their discretion in dismissing her appeal of the notice of overpayment.

In this case, we review the commissioner's decision rather than the ALJ's decision. *Graves v. Emp. Sec. Dep't*, 144 Wn. App. 302, 308, 182 P.3d 1004 (2008); *Tapper v. Emp. Sec. Dep't*, 122 Wn.2d 397, 404-06, 858 P.2d 494 (1993). Further, we do not review the petition for reconsideration or the order denying reconsideration. See RCW 34.05.470(5) ("The filing of a petition for reconsideration is not a prerequisite for seeking judicial review. An order denying reconsideration . . . is not subject to judicial review.").

An ALJ is authorized to enter an order of default if a party fails to attend the hearing. RCW 34.05.440(2). The party may move to vacate the default order. RCW 34.05.440(3). But an order of default will be set aside "only upon a showing of good cause for failure to appear or to request a postponement prior to the scheduled time for hearing." WAC 192-04-185(4).

Whether to vacate a default order is within the commissioner's discretion. *Graves*, 144 Wn. App. at 309. Therefore, we review the commissioner's decision on whether to vacate a default order for an abuse of discretion. See *id.* "An abuse of discretion occurs when a decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons." *Id.*

Here, in the filing that challenged the default order, Love failed to provide *any* reason for failing to appear at the hearing. Without any reason for why Love failed to appear, the commissioner had no grounds for determining that Love had good cause for her failure to appear. Thus, the commissioner did not abuse their discretion in denying Love's petition for review of the ALJ's default order.


We affirm.

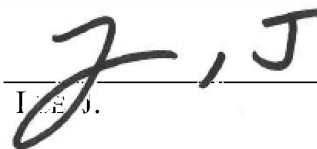
No. 60190-7-II

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.


PRICE, J.

We concur:


VELJANIC, A.C.J.


LEE, J.

April 10, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

TAMARA LOVE,

Appellant,

v.

STATE OF WASHINGTON, EMPLOYMENT
SECURITY DEPARTMENT,

Respondent.

No. 60190-7-II

ORDER DENYING MOTION
FOR RECONSIDERATION

Appellant moves for reconsideration of the opinion filed March 18, 2025, in the above entitled matter. Upon consideration, the Court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj: VELJACIC, LEE, PRICE

FOR THE COURT:


PRICE, J.

The Honorable Timothy Ashcraft
Date: April 01, 2024
Time: 9:00 a.m.



**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

TAMARA LOVE,

PLAINTIFF,

V.

STATE OF WASHINGTON,
EMPLOYMENT SECURITY
DEPARTMENT,

DEFENDANT.

NO. 23-2-09501-0

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

(Clerk's Action Required)

This matter came on regularly for hearing on April 1, 2024, before the above-entitled court pursuant to the Washington Administrative Procedure Act; the Commissioner of the Employment Security Department was represented by ROBERT W. FERGUSON, Attorney General, and CALEB W. GIEGER, Assistant Attorney General; TAMARA LOVE appeared pro se. The Court, having reviewed the Commissioner's Record, pleadings on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

FINDINGS OF FACT

1. At the time of filing the petition, Petitioner, TAMARA LOVE, was a resident of Pierce County, State of Washington.

2. From a review of the record, the Court notes the following background facts from the record. Ms. Love was originally approved for unemployment benefits. Her employer appealed that determination, arguing that she was terminated for misconduct. The Office of Administrative

1 Hearings (OAH) agreed with the employer and reversed the granting of benefits. Subsequently the
2 Employment Security Department issued a letter assessing an overpayment for unemployment
3 benefits previously paid to Ms. Love. Ms. Love appealed that assessment.

4 3. As relevant to this appeal, OAH scheduled a hearing related to Ms. Love's appeal.

5 4. The Notice of Hearing provided that if the petitioner did not appear for the hearing, the
6 judge could dismiss her appeal.

7 5. The Notice of Hearing also provided information on how to change or reschedule the
8 hearing date.

9 6. On the date of the hearing, Ms. Love did not appear.

10 7. The Administrative Law Judge (ALJ) entered an Order dismissing Ms. Love's appeal on
11 August 1, 2023.

12 8. Ms. Love was sent a copy of this Order along with instructions on how to appeal the Order.

13 9. The provided form for the appeal (i.e. a Petition for Review) expressly stated that "[i] you
14 failed to attend the hearing, please tell us why."

15 10. Ms. Love filed a Petition for Review on the provided form.

16 11. In that petition, Ms. Love did not address any reason for her prior failure to appear.

17 12. A Commissioner reviewed Ms. Love's appeal.

18 13. The Commissioner wrote on August 18, 2023 that "Contrary to the clear instructions for
19 filing a Petition for Review set out on the face of the Order Dismissing Appeal (Default), no reason
20 for claimant's failure to appear at the duly notice hearing is alleged in the Petition for Review.
21 Under the circumstances, we have no basis for finding that the nonappearance was for an excusable
22 reason."

23 14. Ms. Love then filed a petition for reconsideration. In that petition, she stated, for the first
24 time, a reason as to why she missed the hearing, writing that "I fell ill and did not realize that I had
25 missed the hearing"

1 15. The petition for reconsideration was denied. The Commissioner wrote that “[w]e perceive
2 no obvious material, clerical error in the decision, nor does it appear that the petitioner was denied
3 a reasonable opportunity to present argument under WA 192-04-190.

4 16. Ms. Love then appealed the Commissioner’s decision to this Court.

5 CONCLUSIONS OF LAW

6 17. This Court has jurisdiction over the parties and the subject matter.

7 18. This matter is governed by the Administrative Procedure Act (APA).

8 18. The sole issue before this Court is whether the Commissioner’s decision to affirm the OAH
9 default was an abuse of discretion.

10 19. This Court reviews the Commissioner’s decision rather than the ALJ’s decision. *Tapper v.*
11 *State Emp. Sec. Dep’t.*, 122 Wn.2d 397, 406, 858 P.2d 494 (1993).

12 20. The decision and record from the petition for reconsideration are not reviewable. RCW
13 34.05.470(5); WAC 192-04-190(4). As such, this Court has not considered any factual statements
14 in the petition for reconsideration.

15 21. The Commissioner’s decision as to whether to set aside the default is reviewed for abuse of
16 discretion. *Graves v. Dep’t. of Emp. Sec.*, 144 Wn. App. 302, 309, 182 P.3d 1004 (2008).

17 22. An abuse of discretion occurs only when the decision is manifestly unreasonable or
18 exercised on untenable grounds.

19 23. The Petition for Review did not contain any grounds that would support vacating the default
20 judgment.

21 25. The Commissioner’s decision to affirm the ALJ default order was not manifestly
22 unreasonable.

23 24. The Commissioner did not abuse its discretion.

24 25. Any remaining claims for relief, including a motion for jury trial and/or a motion for
25 consolidation with a federal case are not properly before the Court.

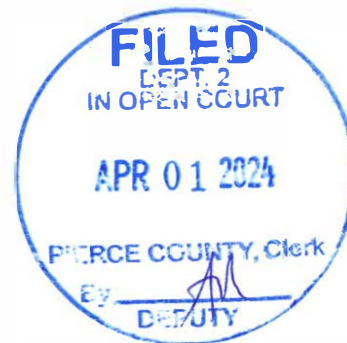
ORDER

The Decision of the Commissioner dated August 18, 2023 is AFFIRMED.

Dated this 1st day of April, 2024.



Judge Timothy L. Ashcraft




CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the document to which this Certificate of Service is attached to be served in the manner as indicated below:

CALEB GIEGER,
Assistant Attorney General
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LalOlyEf@atg.wa.gov

<input type="checkbox"/> Via Legal Messenger
<input type="checkbox"/> Via U.S. Mail, postage prepaid
<input type="checkbox"/> Via Federal Express
<input type="checkbox"/> Via Facsimile
<input checked="" type="checkbox"/> Via Electronic Mail
<input type="checkbox"/> Via Court ECF

Declared under penalty of perjury under the laws of the State of Washington. DATED at Tacoma, Washington this 14 th day of April, 2025.

by/ 
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TAMARA LOVE - FILING PRO SE

April 14, 2025 - 6:51 AM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court

Appellate Court Case Number: Case Initiation

Appellate Court Case Title: Tamara Love, Appellant, v. Employment Security Dept., Respondent. (601907)

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Petition for Review

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