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**SUPREME COURT  
OF THE STATE OF WASHINGTON**

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MELISSA AUCLAIRE,

PETITIONER,

VS.

STATE OF WASHINGTON,  
EMPLOYMENT SECURITY  
DEPARTMENT,

RESPONDENT.

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**ANSWER TO PETITION FOR REVIEW**

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## I. INTRODUCTION

After Melissa Auclaire failed to appear at her administrative hearing, an administrative law judge affirmed the denial of her application for unemployment benefits. The Employment Security Department's Commissioner correctly concluded that Auclaire did not show good cause to miss the hearing when she had notice that a hearing would be scheduled, admitted to mismanaging her mail, and failed to read a text message reminder of the hearing.

Holding that the unchallenged findings supported the conclusion that Auclaire did not have good cause for failing to attend the hearing, the Court of Appeals' unpublished opinion correctly affirmed the Commissioner's decision. *Auclaire v. Emp't Sec. Dep't*, No. 86507-2-I, 2025 WL 1158940 (Wash. Ct. App. Apr. 21, 2025) (unpublished). That decision does not conflict with any decision of this Court or the Court of Appeals, nor does it involve a significant constitutional question or an

issue of substantial public interest. Further review by this Court is unwarranted. RAP 13.4(b).

## **II. STATEMENT OF THE ISSUES**

The Commissioner of the Employment Security Department can vacate a default order only if the moving party shows good cause for failing to appear at a scheduled hearing or request a continuance. WAC 192-04-185(4). Did the Commissioner correctly conclude that Auclaire did not establish good cause when she missed her administrative hearing because she mismanaged her mail and did not timely check her text correspondence from the administrative tribunal?

## **III. STATEMENT OF THE CASE**

### **A. Auclaire Appealed the Denial of Her Application for Unemployment Benefits and Appeared at Her First Administrative Hearing**

Auclaire applied for unemployment benefits with the Employment Security Department (Department), and the Department denied her application because she did not have

good cause to quit her job. AR 51-52. Auclair appealed that decision. AR 55-57.

An administrative hearing was held at the Office of Administrative Hearings (OAH), which Auclair attended. AR 410. Following the hearing, an administrative law judge (ALJ) issued an order affirming the Department's denial of benefits. AR 410-18.

**B. The Department's Commissioner Remanded the Case and Notified the Parties That a New Hearing Would be Scheduled**

Auclair petitioned the Department's Commissioner for further administrative review. AR 423-24, 482 (Finding of Fact (FF) 5). However, the audio recording of the administrative hearing could not be located, so the Commissioner remanded the case to OAH for a new hearing and decision. AR 419, 482 (FF 6). The Commissioner's decision notified both Auclair and her former employer that a new hearing would be scheduled: "This order calls for the scheduling of an additional hearing in the above-entitled matter for the purposes set forth therein. You



will be notified of the time and place when this matter is set for hearing.” AR 420, 482 (FF 6).

On January 5, 2023, OAH issued a Notice of Hearing on Remand, notifying the parties that a telephonic hearing would be held on January 23, 2023, at 2:15 p.m. AR 425-31, 483 (FF 9). The notice was mailed to Auclair and posted on OAH’s participant portal. AR 425-430. The notice informed the parties that the OAH would consider, among other issues, whether Auclair had good cause to quit her job, and provided the parties with instructions for participating in the hearing. AR 425-27. The notice advised the parties, “IF YOU FILED THE APPEAL, and you fail to call in, the Administrative Law Judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).” AR 427.

**C. Auclair Failed to Appear at the New Hearing, and an Administrative Law Judge Affirmed the Denial of Unemployment Benefits**

Auclair did not request a continuance or appear at the January 23 hearing, so the ALJ once again issued an order

affirming the Department's denial of unemployment benefits.

AR 433 (FF 8), 483 (FF 11). The ALJ noted that "[b]y not appearing at the hearing, the Claimant has presented no evidence upon which the Determination Letter could be reversed." AR 433 (CL 2).

**D. Auclaire Appealed, and the Commissioner Remanded to Determine if Auclaire Had Good Cause for her Nonappearance**

Auclaire then petitioned the Commissioner for review of the ALJ's order, stating that she failed to attend the hearing because she "never received any documentation stating that the hearing was to take place." AR 498. She asserted:

The last communication I received was via postal mail from the Commissioner's Review Office concerning the lack of audio recording from the previous hearing. This document regarding the hearing audio mentioned nothing about my request for an appeal being approved, nor that a further hearing was scheduled to take place.

AR 498-99. The Commissioner remanded the case to the OAH for a hearing to determine whether Auclaire had good cause for her failure to appear. AR 506.

**E. Auclaire Testified That She May Have Thrown Out or Misplaced the Hearing Notice and That She Failed to Read a Text Reminder of the Upcoming Hearing**

At the good cause hearing, Auclaire testified that she did not learn of the January 23 hearing until after it had occurred.

AR 33, 483 (FF 14). When questioned further, Auclaire confirmed that her mailing address was correct on the hearing notice's Certificate of Service. AR 35. She also testified that if the notice "were a letter [she] might've accidentally thrown it out." AR 37. She acknowledged that it was possible that the notice was timely delivered before the scheduled hearing, but it may have been misplaced. AR 37, 483 (FF 15).

Auclaire also admitted that 24 hours before the hearing, she received a reminder text message from OAH, but she did not read the text message until several hours after the hearing had taken place. AR 33, 38, 41, 483 (FF 10). Auclaire explained that she does not check her text messages "that often" because of her work schedule. AR 38.

Auclaire also acknowledged that she had received the Commissioner's remand order, which had advised the parties that a new hearing would be scheduled and that the parties would be notified of the date and place when the matter is set for hearing, but she "didn't see that," and was "[n]ot sure what happened there." AR 43, 419-20, 482 (FF 6). Auclaire also acknowledged that OAH provided her with instructions several times on how to use OAH's online participant portal. AR 39-40, 482 (FF 2). But Auclaire "just ignored that" and instead waited to receive correspondences in the mail. AR 40, 482-83 (FF 8).

At the hearing, Auclaire asked the ALJ to assist her in understanding "good cause," and the ALJ provided Auclaire with general information regarding what would constitute good cause for missing an administrative hearing. AR 44-45. The ALJ then asked if Auclaire had any additional testimony to provide before issuing her ruling. AR 45. Auclaire responded "No." *Id.*

**F. The ALJ Determined Auclaire Did Not Have Good Cause for Failing to Appear, and the Department's Commissioner Affirmed**

Following the hearing, the ALJ issued an order concluding that Auclaire had not shown good cause for failing to appear at the January 23 hearing and affirmed the Department's denial of unemployment benefits. AR 486 (Conclusion of Law (CL) 13). The ALJ found that OAH notified Auclaire of the hearing by mailing a notice to her address of record and that negligence in handling mail does not constitute good cause. AR 485 (CL 8, 10). The ALJ also noted the other methods by which Auclaire could have learned of the upcoming hearing—text message and the voluntary participant portal. AR 486 (CL 11, 12). In reaching this decision, the ALJ noted that they had “some concerns about the reliability of the Claimant as a source of factually accurate information.” AR 484 (FF 19).

Auclaire petitioned the Commissioner for review of that decision and claimed, for the first time, that she was

emotionally distressed from caring for herself after contracting COVID-19 and from being let go from her position a month prior at work—two factors which could have caused her to miss the notice of hearing. AR 503-04. The Commissioner adopted the OAH’s findings of fact—except for Finding of Fact 21, which addressed the ALJ’s efforts to address inconsistencies in testimony and the record—and conclusions of law and affirmed the OAH’s conclusion that Auclaire did not establish good cause for her failure to attend the hearing. AR 520-21. The Commissioner noted that Auclaire’s “newly raised matters, being unsworn and not amenable to inquiry by either the administrative law judge or the other parties, must constitute argument rather than evidence.” AR 521.

Auclaire then petitioned for judicial review in the Thurston County Superior Court, and the superior court transferred the case to the Court of Appeals, Division One, for direct review under RCW 34.05.518.

**G. The Court of Appeals Affirmed the Commissioner's Decision**

In an unpublished opinion the Court of Appeals affirmed.

*Auclaire v. Emp't Sec. Dep't*, No. 86507-2-I, 2025 WL

1158940 at \*3 (Wash. Ct. App., Apr. 21, 2025) (unpublished).

The Court concluded that the unchallenged findings that

Auclaire mismanaged her mail and did not immediately read

the text message reminder from OAH “support the

Department's conclusion that Auclaire did not have good cause

for failing to appear at the January 23, 2023, hearing.” *Id.* at \*2.

Auclaire moved for reconsideration, and the Court denied her motion.

**IV. STANDARD OF REVIEW**

Washington's Administrative Procedure Act governs judicial review of the Commissioner's decision.

RCW 34.05.570; RCW 50.32.120. Appellate review is limited

to the agency record. RCW 34.05.558. The Commissioner's

decision is prima facie correct, and the burden of demonstrating

its invalidity lies on the party attacking it—here, Auclair.

RCW 50.32.150; RCW 34.05.570(1)(a).

The Commissioner's findings of fact are reviewed for substantial evidence. *Smith v. Emp't Sec. Dep't*, 155 Wn. App. 24, 32, 226 P.3d 263 (2010). Unchallenged findings of fact are verities on appeal. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993). The appellate court cannot substitute its judgment for that of the agency regarding witness credibility or the weight of the evidence. *Smith*, 155 Wn. App. at 35.

The decision to set aside a default order is discretionary. *Graves v. Dep't of Emp't Sec.*, 144 Wn. App 302, 309, 182 P.3d 1004 (2008). Accordingly, the Court reviews the Commissioner's decision affirming a default order for abuse of discretion. *Id.* An abuse of discretion occurs only "when a decision is manifestly unreasonable or exercised on untenable grounds for untenable reasons." *Id.*



## **V. REASONS WHY REVIEW SHOULD BE DENIED**

This Court should deny review because the Court of Appeals decision does not conflict with any other appellate decisions, and this case does not raise any constitutional questions or issues of substantial public interest. RAP 13.4(b). The Court of Appeals correctly affirmed the Commissioner's decision because substantial evidence in the record supports the determination that Auclaire did not have good cause for missing her administrative hearing when she was on notice that a hearing would be scheduled, mismanaged her mail, and failed to check her text messages. This decision is consistent with case law regarding substantial evidence, and it does not involve any constitutional questions or issues of public interest. The Court should deny review.

### **A. The Court of Appeals Decision Is Consistent with Appellate Case Law**

The Court of Appeals applied settled standards of review and held that the unchallenged findings supported the Department's conclusion that Auclaire received sufficient

notice of the January 23, 2023, hearing. The Court of Appeals then held, consistent with those unchallenged findings and precedent, that Auclaire did not establish good cause for failing to appear at the hearing when she mismanaged her mail and ignored a text message reminder from OAH. Review under RAP 13.4(b)(1) or (2) is not warranted.

**1. Substantial Evidence Supports the Commissioner's Finding that Auclaire Received the Notice of Hearing**

The Court of Appeals correctly affirmed the Commissioner's unchallenged findings by applying settled precedent on the standard of review. Auclaire has failed to establish this case conflicts with other appellate decisions. RAP 13.4(b).

When a notice is properly addressed and mailed, a presumption arises that it was received. *Scheeler v. Dep't of Emp't Sec.*, 122 Wn. App. 484, 489, 93 P.3d 965 (2004). An affidavit of mailing suffices to demonstrate that a notice was mailed. *See Scheeler*, 122 Wn. App. at 490 n.14. The

presumption that mail was received may be overcome by evidence that the notice was never received, but a mere denial of receipt is not sufficient. *In re: Mellroth*, Emp't Sec. Comm'r Dec.2d 591 (WA), 1980 WL 344269, \*3.<sup>1</sup>

Here, OAH mailed notice of the January 23, 2023, hearing to Auclaire's address of record and to her former employer on January 5, 2023. AR 425-31, 483 (FF 9). Auclaire testified that the Certificate of Service correctly listed her mailing address. AR 35. Although Auclaire failed to appear at the January hearing, her employer appeared, indicating that the notice had been properly sent. AR 6-7, 483 (FF 11). Thus, there was a presumption that the notice was mailed and received.

Auclaire failed to overcome that presumption. Although she claimed that she did not receive the notice, she testified that if the notice "were a letter, [she] might've accidentally thrown

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<sup>1</sup> Precedential Commissioner's decisions "are to be treated as persuasive authority by a reviewing court." *Graves*, 144 Wn. App. at 309 (citing *Martini v. Emp't Sec. Dep't*, 98 Wn. App. 791, 795, 990 P.2d 981 (2000)).

it out” and acknowledged that it was possible that the notice was timely delivered before the scheduled hearing, but got misplaced. AR 37, 483 (FF 15). All of this is substantial evidence to support the unchallenged findings, which are verities, in any event.

Auclaire argues that the Court of Appeals failed to credit her testimony that she did not receive the notice. Petition at 2, 3. But the Commissioner considered her testimony and found Auclaire to be not credible. AR 484 (FF 19), 520. The Court of Appeals correctly declined to revisit this credibility determination on appeal. *See Smith*, 155 Wn. App. at 35. This is consistent with appellate review standards and does not merit further review.

Auclaire further argues that she received “inadequate notice” of the hearing, citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L.Ed. 865 (1950), and *Ortiz-Santiago v. Barr*, 924 F.3d 956 (7th Cir. 2019). Petition at 2. These cases are inapposite. *Mullane* addressed the

sufficiency of notice by publication under the New York Banking Law, when the beneficiaries had known places of residence. 339 U.S. at 318-19. In *Ortiz-Santiago*, the Seventh Circuit merely held that the statutory requirement that a Notice to Appear from the Department of Homeland Security include the time, date, and place of the removal proceeding was not “jurisdictional” in nature. 924 F.3d at 958.

Auclaire also cites *Estate of Lint v. Bowers*, 135 Wn.2d 518, 957 P.2d 755 (1998), but she does not provide any explanation as to how that case—which addressed whether there was sufficient evidence to support a trial court’s conclusion that a will was procured by undue influence or fraud and whether a trial court had jurisdiction to declare a marriage void—applies here. Petition at 2, 3. The Commissioner properly weighed the documentary evidence and Auclaire’s testimony, and the Court of Appeals properly declined to reweigh the evidence. *Auclaire*, 2025 WL 1158940, at \*2. This case is

consistent with other appellate decisions and presents no basis for review under RAP 13.4(b)(1)-(2).

**2. The Court of Appeals Correctly Determined That the Unchallenged Findings Supported the Conclusion That Auclaire Did Not Have Good Cause to Miss Her Administrative Hearing**

The Court of Appeals correctly determined that the unchallenged findings supported the Department's conclusion that Auclaire did not have good cause for failing to appear at the January 23, 2023, hearing. *Auclaire*, 2025 WL 1158940, at \*2. Auclaire fails to establish this decision is inconsistent with other appellate decisions. RAP 13.4(b).

An ALJ may enter a dispositive or default order when a party fails to attend a hearing. RCW 34.05.440(2). The decision to set aside a default order is discretionary. *Graves*, 144 Wn. App at 309. The Commissioner can vacate a default only if the petitioner shows good cause for either failing to appear or failing to request rescheduling. WAC 192-04-185(4). Good cause is established when there are circumstances that would

“effectively deter a reasonably prudent person from appearing.”

*In re: Shay*, Emp. Sec. Comm’r Dec.2d 970 (WA), 2011 WL 8129816, at \* 2.

Consistent with these standards, the Court of Appeals affirmed the Commissioner’s determination that Auclaire did not have good cause for her failure to appear. The Commissioner’s remand order put Auclaire on notice that a new hearing would be scheduled. AR 419, 482 (FF 6). Even so, she mismanaged her mail, failed to check a text message reminder of the hearing, and declined to use OAH’s voluntary portal to monitor her case. AR 35, 37-38, 41, 482-83, 486 (FF 7, 9-10, 15; CL 12). The circumstances would not have deterred a reasonably prudent person from appearing at the hearing.

Auclaire claims, without argument, that the Commissioner’s determination is arbitrary. Petition at 2, 3. An agency acts in an arbitrary and capricious manner if its actions are willful and unreasoning, disregarding the facts and circumstances. *Belling v. Emp’t Sec. Dep’t*, 191 Wn.2d 924,

934, 27 P.3d 611 (2018). The Commissioner considered the entire record—including documentary evidence and Auclaire’s testimony—and reached the conclusion that Auclaire did not have good cause because she missed the hearing due to her own negligence. AR 520-21. This was not arbitrary. The Court should deny review.

**B. This Case Does Not Present Any Constitutional Issues**

This case presents the straightforward question of whether the unchallenged findings that Auclaire sometimes mismanages her mail and did not review a text message reminder of an upcoming administrative hearing in turn support the conclusion that Auclaire did not establish good cause for failing to attend her hearing. *Auclaire*, 2025 WL 1158940, at \*2. That straightforward question does not present any constitutional questions, let alone any significant ones warranting this court’s review. RAP 13.4(b)(3).

This Court should decline to accept review based on Auclaire’s argument, for the first time on appeal, that the loss of



the audio recording from her first administrative hearing amounted to a due process violation. Petition at 3. To address the loss of the audio recording, the Commissioner remanded this case to the OAH for another hearing, giving Auclaire a second opportunity to present evidence that she was eligible for unemployment benefits. AR 506. Auclaire then failed to appear at that hearing due to her own negligent handling of the mail and her failure to monitor her text messages and the voluntary online portal. Her due process rights were not violated and review should be denied. RAP 13.4(b)(3).

**C. This Case Does Not Involve a Matter of Substantial Public Interest**

Finally, Auclaire's petition does not involve "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4); Petition at 4. Auclaire claims that "these errors affect thousands of unemployment claimants." Petition at 4. But Auclaire presents no evidence that "thousands" of unemployment claimants miss their

administrative hearings, and she fails to establish that any errors have been made in this case. Petition at 4. There is no need for further review.

## VI. CONCLUSION

Auclaire has failed to establish any grounds for review under RAP 13.4(b). The Court should deny review.

I certify that this document contains 3,230 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 3rd day of September, 2025.

NICHOLAS W. BROWN  
Attorney General

A handwritten signature in black ink, appearing to read "Marya Colignon", written in a cursive style.

MARYA COLIGNON  
WSBA #42225  
Assistant Attorney General  
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## PROOF OF SERVICE

I, Michael Sawyer, certify that I caused to be served a copy of **Answer to Petition for Review** on all parties or 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 3rd day of September 2025, in Seattle,  
Washington.

  
MICHAEL SAWYER, Paralegal

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