

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
May 02, 2014, 1:46 pm
BY RONALD R. CARPENTER
CLERK

NO. 90121-0

RECEIVED BY E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

MOHAMED ABDELKADIR,

Petitioner

vs.

STATE OF WASHINGTON DEPARTMENT
OF EMPLOYMENT SECURITY,

Respondent.

ANSWER TO PETITION FOR REVIEW

ROBERT W. FERGUSON
Attorney General

APRIL S. BENSON,
WSBA # 40766
Assistant Attorney General
Attorneys for Respondent
OID #91020
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
Phone: (206) 464-7676
Fax: (206) 389-2800
E-mail: LALSeaEF@atg.wa.gov

 ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF THE ISSUES	1
	1. Under RCW 50.22.150(2)(d), an individual must submit a training program for approval within 60 days after being notified about the Training Benefits program. Did the Commissioner properly deny Abdelkadir’s application as untimely when substantial evidence shows Abdelkadir was notified of the program on February 20, 2009, but failed to submit an application until October 11, 2011, more than two years late?	2
	2. To be eligible for Training Benefits, a claimant must meet the definition of “dislocated worker,” which means the claimant is unlikely to return to employment due to a diminishing demand for his or her skills. RCW 50.22.150(2)(a), 50.04.075(1). Did the Commissioner correctly conclude that Abdelkadir was not a “dislocated worker” when he had training and experience as a truck driver, a demand occupation?	2
III.	COUNTERSTATEMENT OF THE CASE	2
IV.	REASONS WHY REVIEW SHOULD BE DENIED	5
	A. Adbelkadir Does Not Address Any of the Criteria Under RAP 13.4(b) Justifying Review of a Court of Appeals Decision	5
	B. The Court of Appeals Properly Concluded that Abdelkadir was Ineligible for Training Benefits	6

1.	The Court of Appeals Correctly Upheld the Commissioner’s Decision That Abdelkadir’s Application for Training Benefits was Untimely	7
2.	The Court of Appeals Correctly Upheld the Commissioner’s Decision That Abdelkadir Did Not Meet the Statutory Definition of “Dislocated Worker”	8
V.	CONCLUSION	10

TABLE OF AUTHORITIES

Cases

<i>Abdelkadir v. Dep't of Emp't Sec.</i> , No. 69736-6-I, slip op. (Wash. Ct. App. Mar. 3, 2014)	4, 5, 8, 9
<i>Tapper v. Emp't Sec. Dep't</i> , 122 Wn.2d 397, P.2d 494 (1993)	6

Statutes

RCW 34.05.510	6
RCW 50.04.075	8
RCW 50.04.075(1).....	2
RCW 50.04.075(1)(c)	9
RCW 50.22.150	7
RCW 50.22.150(2)(a)	2, 8
RCW 50.22.150(2)(d)	2, 4, 7, 8
RCW 50.32.120	6

Rules

RAP 13.4.....	5
RAP 13.4(b).....	1, 2, 5, 6, 10

Regulations

WAC 192-100-035.....	7
----------------------	---

I. INTRODUCTION

The Commissioner of the Employment Security Department determined that Mohamed Abdelkadir was ineligible to receive Training Benefits, a specific category of unemployment benefits. In order to receive Training Benefits, Abdelkadir was required to submit a timely application and meet the statutory definition of “dislocated worker” under the Employment Security Act (the Act). In affirming the Commissioner’s decision, the superior court and the Court of Appeals correctly held that Abdelkadir did not meet either of two necessary criteria: his application was more than two years late, and he was not a “dislocated worker” under the Act.

Abdelkadir argues no basis for review under RAP 13.4(b), which provides the exclusive bases for accepting review of the Court of Appeals’ decision. The Court of Appeals’ decision does not conflict with case law, and this case raises no significant constitutional questions or issues of substantial public importance. Further review by this Court is unwarranted.

II. COUNTERSTATEMENT OF THE ISSUES

For the reasons set forth below, the issues raised in Abdelkadir’s Petition for Review are not appropriate for this Court’s discretionary

review under RAP 13.4(b). If the Court were to accept review, however, the issues before the Court would be:

1. Under RCW 50.22.150(2)(d), an individual must submit a training program for approval within 60 days after being notified about the Training Benefits program. Did the Commissioner properly deny Abdelkadir's application as untimely when substantial evidence shows Abdelkadir was notified of the program on February 20, 2009, but failed to submit an application until October 11, 2011, more than two years late?
2. To be eligible for Training Benefits, a claimant must meet the definition of "dislocated worker," which means the claimant is unlikely to return to employment due to a diminishing demand for his or her skills. RCW 50.22.150(2)(a), 50.04.075(1). Did the Commissioner correctly conclude that Abdelkadir was not a "dislocated worker" when he had training and experience as a truck driver, a demand occupation?

III. COUNTERSTATEMENT OF THE CASE

Abdelkadir filed a claim for unemployment benefits on February 19, 2009. Certified Administrative Record (AR) at 59, 85, 136, 144 (Finding of Fact (FF) 1), 163.¹ The Department sent Abdelkadir an Unemployment Claims Kit on February 20, 2009, which included information about Training Benefits. AR at 58, 87, 136, 145 (FF 5).

The Commissioner initially denied Abdelkadir's claim for weekly benefits because of the nature of his separation from employment. AR at

¹ King County Superior Court transmitted the Commissioner's certified administrative record to this Court under a separate cover from the remaining clerk's papers.

144 (FF 2), 157. Abdelkadir appealed the Commissioner's decision to superior court and then the Court of Appeals. AR at 145 (FF 3), 157-58. The parties settled the matter in Abdelkadir's favor in December 2010. AR at 145 (FF 3), 157-58. This settlement was limited to Abdelkadir's eligibility for weekly unemployment compensation benefits related to his job separation and did not address his eligibility for Training Benefits. AR at 157-58.

In October 2011, Abdelkadir submitted to the Department an application for Training Benefits for a program at Shoreline Community College beginning in January 2012. AR at 85-87, 103-08, 146 (FF 12). In the application, Abdelkadir identified the occupation "driver" as his "main job." AR at 103, 105, 145 (FF 4). The Department determined that Abdelkadir was not eligible for Training Benefits because his "last occupation is considered to be 'in demand' per the Workforce development council," rendering him employable with the skills and training he already possessed. AR at 85-91, 146 (FF 16). Additionally, the Department determined that Abdelkadir was ineligible for Training Benefits because he did not submit a timely training plan to the Department for approval. AR at 85-91, 146 (FF 16).

Abdelkadir appealed the Department's denial of Training Benefits to the Office of Administrative Hearings. AR at 92-102. Following a

hearing, an administrative law judge (ALJ) affirmed the Department's decision. AR at 144-51.

Abdelkadir then petitioned the Commissioner of the Department for review. AR at 153-60. The Commissioner adopted the findings and conclusions of the ALJ and affirmed the determination that Abdelkadir was not eligible for Training Benefits. AR at 162-65. Abdelkadir appealed to King County Superior Court, which affirmed the Commissioner's decision. CP at 122-24.

Abdelkadir then appealed to the Court of Appeals, which affirmed the Commissioner's decision in an unpublished decision. *Abdelkadir v. Dep't of Emp't Sec.*, No. 69736-6-I, slip op. (Wash. Ct. App. Mar. 3, 2014). The court held there was substantial evidence to support the Commissioner's findings that the Department sent Abdelkadir an Unemployment Claims Kit, which contained information about Training Benefits, on February 20, 2009, and that Abdelkadir did not submit his application for training benefits until October 2011. *Id.* at 5-6. Based on this finding, the court concluded that Abdelkadir's application was untimely under RCW 50.22.150(2)(d). *Id.* The court also held that there was substantial evidence to support the Commissioner's finding that the occupation of truck driver is a "demand" occupation, and because Abdelkadir had training in that occupation, he was not a dislocated

worker. *Id.* at 6-8. Abdelkadir was thus ineligible for Training Benefits. Abdelkadir now petitions this Court for review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

A. Abdelkadir Does Not Address Any of the Criteria Under RAP 13.4(b) Justifying Review of a Court of Appeals Decision

The Court will grant review of the Court of Appeals decision only if Abdelkadir demonstrates one or more of the four exclusive criteria enumerated in RAP 13.4(b):

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Abdelkadir's petition does not cite RAP 13.4 or offer any argument to demonstrate that any of the RAP 13.4 criteria apply. He does not argue that the Court of Appeals' decision in this case conflicts with a decision of the Supreme Court or another division of the Court of Appeals. He makes no attempt to show that there is a significant question of law under the constitution, or that there is an issue of substantial public interest that this Court should determine.

Abdelkadir's only basis for seeking review appears to be that he does not agree with the lower courts' decisions. Mere disagreement with the lower courts' decisions is not sufficient to warrant this Court's review.

B. The Court of Appeals Properly Concluded that Abdelkadir was Ineligible for Training Benefits

Rather than asserting a basis for review pursuant to RAP 13.4(b), Abdelkadir repeats his challenge to the Commissioner's findings of fact and the ultimate conclusion that he was ineligible for Training Benefits. However, the Court of Appeals and superior court already properly decided Abdelkadir's case in accordance with the Employment Security Act and applied the correct standard of review to conclude that substantial evidence in the record supports the findings of fact and the Commissioner committed no error of law. This Court sits in the same position as the superior court and applies the APA standards of review directly to the Commissioner's administrative record. *Tapper v. Emp't Sec. Dep't*, 122 Wn.2d 397, 402, 858 P.2d 494 (1993); RCW 34.05.510; RCW 50.32.120. Abdelkadir provides no basis for this Court to conduct, for a third time, the same type of judicial review.

Abdelkadir appears to be asserting that he should be eligible for Training Benefits because he already established the "legitimacy of [his] claim." Pet. for Review at 5. This can only be a reference to the

December 2010 settlement. But that settlement addressed the nature of Abdelkadir's job separation and his eligibility for weekly unemployment compensation benefits. The settlement did not address his eligibility for Training Benefits. AR at 144-45 (FF 2, 3), 157-58.

Nevertheless, in order to respond to Abdelkadir's Petition, the following sets forth why the decisions below denying Training Benefits were correct.

1. The Court of Appeals Correctly Upheld the Commissioner's Decision That Abdelkadir's Application for Training Benefits was Untimely

RCW 50.22.150 sets forth eligibility criteria for Training Benefits for individuals—like Abdelkadir—with unemployment benefits claims submitted before April 5, 2009.² Under RCW 50.22.150, a claimant is eligible to receive Training Benefits if, among other things, he or she submits an individual training program to the Commissioner “within sixty days after the individual is notified by the employment security department of the requirements of this section.” RCW 50.22.150(2)(d).

The Commissioner found that the Department sent Abdelkadir an Unemployment Claims Kit, which contained information about Training Benefits, on February 20, 2009. AR at 145 (FF 5). As the Court of

² The “effective date” of an unemployment benefits claim is the Sunday of the calendar week in which the application for benefits is filed. WAC 192-100-035. Abdelkadir submitted his application for unemployment benefits on February 19, 2009. AR at 59, 85, 136, 144 (FF 1).

Appeals recognized, this finding is supported by a “Date Calculator” exhibit in the record, which shows that Abdelkadir opened his claim on “2/19/2009” and “claims booklet went out on 2/20/09.” *Abdelkadir*, slip op. at 5; AR at 87, 136. Additionally, Abdelkadir testified at his hearing that when he opened his claim, the Department sent him something in the mail about “how to file for benefits.” *Abdelkadir*, slip op. at 5; AR at 58. Abdelkadir does not dispute that he submitted his application for Training Benefits more than two years later, on October 11, 2011.

Based upon these supported findings, the Court of Appeals properly upheld the Commissioner’s decision that Abdelkadir’s application for Training Benefits was untimely, as it was more than two years beyond the 60-day deadline set forth in RCW 50.22.150(2)(d). Abdelkadir offers no basis that this decision warrants review under RAP 13.4.

2. The Court of Appeals Correctly Upheld the Commissioner’s Decision That Abdelkadir Did Not Meet the Statutory Definition of “Dislocated Worker”

To be eligible for Training Benefits, RCW 50.22.150(2)(a) requires the claimant to be “a dislocated worker as defined in RCW 50.04.075.” A “dislocated worker” is an unemployed individual who, among other things, “[i]s unlikely to return to employment in the individual’s principal occupation or previous industry because of a

diminishing demand for their skills in that occupation or industry.”
RCW 50.04.075(1)(c).

The Commissioner found that Abdelkadir had seven years of work experience as a delivery driver and that the occupation of truck driver is a “demand occupation.” AR at 145-46 (FF 4, 14). The Court of Appeals correctly recognized that these findings were supported by exhibits in the record showing that truck drivers are classified as an occupation in demand in the the Seattle King County and Snohomish County workforce development areas. *Abdelkadir*, slip. op. at 7; AR at 109-110; *see also* AR at 103-05 (Abdelkadir’s Training Benefits application showing his occupation and work history).

Therefore, as the Court of Appeals ruled, “Based upon the finding that his occupation was deemed to be in demand, the Commissioner correctly concluded that Abdelkadir did not meet the definition of a dislocated worker.” *Abdelkadir*, slip op. at 8. Abdelkadir’s principal occupation or previous industry was not in “diminishing demand.” RCW 50.04.075(1)(c). As a result, review is not warranted in this case.

V. CONCLUSION

Abdelkadir does not cite any ground on which this Court should accept review under RAP 13.4(b). Moreover, the Court of Appeals' decision is supported by substantial evidence, is consistent with the Employment Security Act, and raises no issue that justifies review by this Court. The Court should deny review.

RESPECTFULLY SUBMITTED this 2nd day of May, 2014.

ROBERT W. FERGUSON
Attorney General

April S. Benson

APRIL S. BENSON,
WSBA # 40766
Assistant Attorney General
Attorneys for Respondent

PROOF OF SERVICE

I, Judy St. John, declare as follows:

1. That I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action.
2. That on the 2nd day of May 2014, I caused to be served a copy of **Department's Response Brief** on the Appellants of record on the below date as follows:

Via United States Postal Service, postage pre-paid

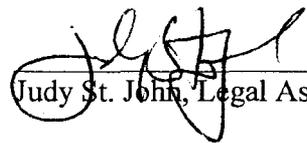
Mohamed Abdelkadir
P.O. Box 25794
Seattle, Washington 98165-1294

Original e-filed by e-mail

supreme@courts.wa.gov

I DECLARE UNDER PENALTY OF PERJURY UNDER
THE LAWS OF THE STATE OF WASHINGTON that the
foregoing is true and correct.

Dated this 2nd day of May 2014 in Seattle, Washington



Judy St. John, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: St. John, Judith (ATG)
Cc: Benson, April (ATG)
Subject: RE: Mohamed Abdelkadir v State of Washington Department of Employment Security, No. 90121-0 - Answer to Peititon for Review

Rec'd 5/2/2014

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: St. John, Judith (ATG) [mailto:JudithS@ATG.WA.GOV]
Sent: Friday, May 02, 2014 1:41 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Benson, April (ATG)
Subject: RE: Mohamed Abdelkadir v State of Washington Department of Employment Security, No. 90121-0 - Answer to Peititon for Review

Dear Clerk,

Attached for filing is Answer to Petition for Review by State of Washington Department of Employment Security in Mohamed Abdelkadir v State of Washington Department of Employment Security, No. 90121-0.

The Petitioner is receiving a hard copy via U.S. Mail.

Judy St. John
Legal Assistant to:
Dionne Padilla-Huddleston, April Benson
& Leah Harris

*Office of the Attorney General
Seattle Licensing and Administrative Law Division
800 Fifth Avenue, Suite 2000
Seattle, Washington 98104-3188*
☎ 206.587.4215
✉ judiths@atg.wa.gov

In Recognition of the AGO Sustainability Plan, please print only if necessary.

CONFIDENTIALITY NOTICE: This transmission may contain confidential information protected by state or federal law. The information is intended only for use consistent with the state business discussed in this transmission. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents is strictly prohibited. If you have received this transmission in error, please notify the sender immediately to arrange for return, destruction or deletion of the transmission. Your cooperation is appreciated.