

December 1, 2015

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

EMANUEL McCRAY,

Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT
OF EMPLOYMENT SECURITY,

Respondent.

No. 47722-0-II

UNPUBLISHED OPINION

JOHANSON, C.J. — The Employment Security Department (ESD) moves to dismiss Emanuel McCray’s appeal and requests we remand this matter for the superior court to consider McCray’s petition for review on the merits.¹ In light of ESD’s concession that the superior court should not have dismissed the petition for review as untimely filed, we reverse and remand.

BACKGROUND

On May 22, 2015, the superior court dismissed McCray’s petition for review of ESD’s decision to deny his claim for unemployment benefits. It concluded that McCray failed to invoke the appellate jurisdiction of the superior court because he did not timely serve ESD. And his timely service on the Attorney General’s Office did not grant the superior court jurisdiction because “the

¹ A commissioner of this court converted the motion to dismiss to a motion on the merits to reverse and referred it to a panel of judges for consideration. RAP 18.14(e)(2); RAP 18.14(d).

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Office of the Attorney General was not the attorney of record for the Respondent at that time.” Clerk’s Papers at 10. McCray appealed pro se.

ANALYSIS

Before the parties briefed the merits of the appeal, ESD moved to dismiss the appeal, acknowledging that the trial court erred in dismissing McCray’s request for review as untimely filed. It noted that it had contacted McCray but that he refused to enter into a stipulated dismissal. McCray filed an objection to the motion. On September 2, 2015, we denied the motion to dismiss and converted it to a motion on the merits to reverse.

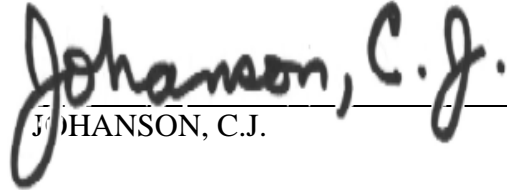
Upon review of ESD’s motion, we determine that, due to the concession, this matter should be remanded for the superior court to consider the merits of McCray’s petition for review. McCray submitted documentation to the superior court that he mailed his petition for review to both the Attorney General’s Office and the Commissioner of ESD on the same day. *See* RCW 34.05.010(19) (“Service by mail is complete upon deposit in the United States mail.”).

McCray also requests recovery of his fees and costs. He cites no authority for a pro se litigant to receive attorney fees. With respect to costs, we note that ESD indicates that it has requested the superior court to refund McCray’s filing fee. To the extent that any costs remain unreimbursed, McCray is directed to submit a cost bill pursuant to RAP 14.4 as the prevailing party on appeal. RAP 14.2.

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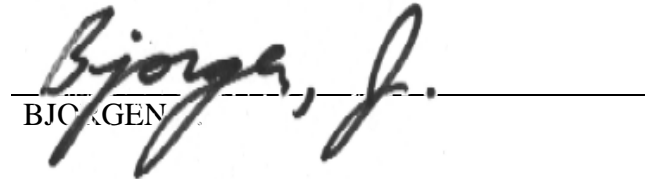
Reversed and remanded for proceedings consistent with this opinion.

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.

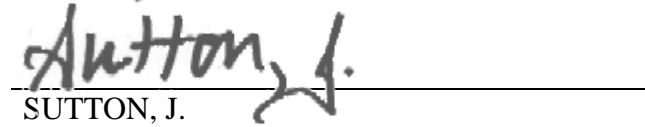


JOHANSON, C.J.

We concur:



BJORGE, J.



SUTTON, J.