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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

Vallerie Fisher,

Case No. 08-2-21976-3 SEA

Petitioner,

**PETITIONER'S TRIAL BRIEF**

State of Washington Employment Security  
Department,

Respondent.

COMES NOW Petitioner, Vallerie Fisher (Ms. Fisher) appeals the Commission of the Employment Security Department's (ESD) final order rendered on May 30, 2008, docket number 02-2008-26160. On January 26, 2008, the Employment Security Department's (Agency) granted unemployment benefits to Ms. Fisher after she was terminated from employment with the Seattle School District (SSD). On February 27, 2008, the SSD filed an appeal of the Agency's January 26, 2008 decision to grant benefits. On March 13, 2008, the Agency granted a hearing to determine whether there was disqualifying misconduct and to reinstate benefits. On March 14, 2008, the Agency issued a decision to set aside the initial order to grant unemployment benefits to Ms. Fisher. On April 15, 2008, Ms. Fisher filed an appeal with the ESD Review Office and on May 9, 2008, the ESD denied Ms. Fisher's appeal petition. On May 20, 2008, Ms. Fisher filed a petition for reconsideration. On or about May 27, 2008, Ms. Fisher came in possession of new evidence and faxed such evidence to the ESD Review Office. On May 30, 2008, the ESD Review

PETITIONER'S TRIAL BRIEF

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1 Office denied Ms. Fisher's petition for reconsideration. On June 30, 2008, Ms. Fisher filed a  
2 petition for judicial review of an agency action with this Court.

3 **I. RELIEF REQUESTED**

4 Petitioner, Vallerie Fisher hereby moves the Court for an order reinstating her  
5 unemployment benefits and requiring Respondent ESD to pay all retroactive benefits, pursuant to  
6 RCW 34.05.574(1). In the alternative, Ms. Fisher requests that the Court remand this case to  
7 ESD for reconsideration, pursuant to RCW 34.05.370.

8  
9 **II. FACTS OF SIGNIFICANCE**

10 Ms. Fisher was employed by the Seattle School District (SSD) as a family support worker  
11 and maintained such employment for approximately 10 years. See ESD Transcript, page 10 lines  
12 7-9. On or about September 5, 2006, a cousin to Ms. Fisher, Ms. Pamela Williams, asked Ms.  
13 Fisher to take legal guardianship of Ms. Williams' oldest daughter, Ashley Williams, due to  
14 domestic issues. Ms. Fisher agreed and the two women proceeded to fill out the District's legal  
15 guardianship forms, which required notarization for completion. A week or so later when the  
16 guardianship documents were set to be notarized, Ms. Williams told Ms. Fisher that she no longer  
17 needed her assistance and she (Ms. Williams) would take care of the paperwork. However, Ms.  
18 Williams proceeded to turn in the incomplete documents to the District without Ms. Fisher's  
19 knowledge or permission. Given no more thought to the matter, Ms. Fisher carried on with her  
20 life and had no further communication with her cousin, Ms. Pamela Williams.

21 On September 7, 2007, Ms. Fisher attended a Seattle School District pre-termination  
22 administrative hearing. Ms. Fisher was informed that the pre-termination meeting was considered  
23 a *Loudermill* hearing. Ms. Misa Garmoe, a human resources manager with the Seattle School  
24 District presided over the hearing acting as the decision-maker and sole note taker. At this  
25

1 September 7, 2007, administrative hearing Ms. Fisher was asked questions about her relationship  
2 to Ms. Pamela Williams.

3 On or about October 19, 2007, Ms. Fisher was contacted again and asked about her  
4 relationship to Ms. Pamela Williams and whether Ms. Williams had ever lived with her. Ms.  
5 Fisher answered in the affirmative for the early 2000's and explained that Ashley Williams was  
6 planning to live with her, however, Ms. Williams no longer needed Ms. Fisher's assistance. On  
7 November 28, 2007, Ms. Fisher was terminated for allegedly aiding and abetting a non-Seattle  
8 School District family in attempting to defraud the District. At this October 19, 2007 pre-  
9 termination hearing, Ms. Garmoe acted as the sole note taker and the decision-maker.

10 Ms. Fisher immediately filed for unemployment benefits. In February 2008, after benefits  
11 were awarded to Ms. Fisher, the District filed an appeal with the Employment Security  
12 Department stating that Ms. Fisher should not receive unemployment benefits because of her  
13 alleged disqualifying misconduct.

14 Ms. Fisher filed a petition for review and a hearing was set for March 13, 2008. At the  
15 March 13, 2008 hearing, Ms. Garmoe (the sole note taker and decision-maker in the pre-  
16 termination hearings) was the District's sole witness. At this hearing, Ms. Garmoe led the tribunal  
17 to believe that the District suffered harm due to Ms. Fisher's alleged misconduct. *See ESD*  
18 *Transcript, page 38, lines 2-16.*

19 On or about May 27, 2008, Ms. Fisher discovered new evidence that tends to demonstrate  
20 the District did not consider the incomplete legal guardianship forms signed by Ms. Fisher with a  
21 date of September 5, 2006. Although these documents were signed by Ms. Fisher with the intent  
22 of assuming legal guardianship of Ashley Williams, once Ms. Williams informed Ms. Fisher that  
23 she no longer needed her assistance, Ms. Fisher abandoned her plans to assume legal guardian.  
24 Nonetheless, Ms. Williams submitted the forms to the District without Ms. Fisher's consent or  
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1 knowledge. *See* attached supporting document marked exhibit 1.0. Other evidence tends to show  
2 that the District was engaged in a lengthy litigation process with Ms. Pamela Williams based on  
3 Ms. Williams continuous efforts to enroll her children into the Seattle School District while  
4 residing outside the District. *See* supporting documents marked exhibit 1.0.

5           Additionally, new evidence tends to show that Ms. Williams's children were not admitted  
6 into the District based on the September 5, 2006, incomplete un-notarized forms because those  
7 forms were not considered by the District. *See* supporting documents marked exhibit 2.0. This  
8 information is contrary to the testimony given by Ms. Garmoe at the March 13, 2008 hearing. *See*  
9 ESD Transcript, page 10, lines 19-25. Although the District was aware that Ms. Williams's  
10 children were not enrolled based on the incomplete un-notarized legal guardianship forms dated  
11 September 5, 2006, the District through Ms. Misa Garmoe knowingly and willingly misled a  
12 tribunal with false testimony that prejudiced Ms. Fisher's right to receive unemployment benefits.

13           On or about May 27, 2008, Ms. Fisher came into possession of this new evidence. On  
14 May 29, 2008, the new evidence faxed to the Commission of the ESD Review Office, however,  
15 reconsideration was denied without review of the new evidence. On or about June 12, 2008, Ms.  
16 Fisher notified the District of the new evidence that tends to demonstrate that Ms. Misa Garmoe  
17 knowingly misled the tribunal with false testimony, and that the tribunal relied upon the false  
18 testimony when it denied Ms. Fisher's petition and request for reconsideration. The District did  
19 not respond to this new evidence.  
20

21           Meanwhile, Ms. Fisher is working with her local union representative at the Washington  
22 Education Association and the local office, the Seattle Education Association, to address whether  
23 the District breached the Collective Bargaining Agreement and whether the District has cause to  
24 terminate Ms. Fisher.  
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### III. STATEMENT OF ISSUES

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- A. Whether Ms. Fisher's act or failure to act was a willful disregard of her employer's interests and actually caused harm when Ms. Fisher neither knew nor intended the documents to be sent to the District.
  - B. Whether the District was actually harmed by Ms. Fisher's alleged misconduct even though the Williams' children were not enrolled in the Seattle School District based on the incomplete un-notarized forms presented to the District without Ms. Fisher's consent or knowledge.
  - C. Whether this Court should admit and consider the new evidence that Ms. Fisher discovered on May 27, 2008, when the evidence was 1) not in Ms. Fisher's possession or control; 2) Ms. Fisher had no way to know of the existence of the evidence; 3) the District had the evidence in its possession.
  - D. Whether ESD committed an error of law in its application of the disqualifying misconduct standard under RCW 50.04.293 when 1) Ms. Fisher's alleged misconduct did not relate to her duties as an employee; and 2) Ms. Fisher received no warnings before her termination.

### IV. LEGAL AUTHORITY AND ARGUMENTS

#### 1. Standard of Review

Under the Washington Administrative Procedure Act (APA), chapter 34.05 RCW, courts review the Commissioner's legal determinations using the "error of law" standard, *see* RCW 34.05.570(3)(d), which allows this court to substitute its view of the law for that of the Commissioner, *Haley v. Medical Disciplinary Board*, 117 Wn.2d 720, 728, 818 P.2d 1062 (1991) (courts accord weight to an agency's interpretation of a statute within its expertise). Whether undisputed facts constitute "misconduct" is properly reviewed as a question of law. *See Daily Herald Co. v. Dept. of Empl. Sec.*, 91 Wn.2d 559, 588 P.2d 1157 (1979). Courts review Commissioner's factual determinations of disputed facts under the "substantial evidence" standard. RCW 34.05.570(3)(e).

1           2.    **Issues**

2  
3           **A.    BASED ON THE UNDISPUTED FACTS, MS. FISHER SIMPLY COMMITTED AN ERROR IN**  
4           **JUDGMENT WHEN SHE TRUSTED HER COUSIN TO DESTROY THE GUARDIANSHIP**  
5           **DOCUMENTS.**

6           Good cause for discharge is not to be equated with misconduct disintitling the worker to  
7           benefits." *Ciskie v. Employment Sec. Dep't*, 35 Wn. App. 72 (1983). Washington case law defines  
8           misconduct for the purpose of receiving unemployment benefits as:

9           An employee's act or failure to act in willful disregard of his or her employer's interest  
10           where the effect of the employee's act or failure to act is to harm the employer's business."  
11           RCW 50.04.293. Therefore, to constitute "disqualifying misconduct," the employee's  
12           conduct must be "both willful ('willful disregard of [the] employer's interest') and harmful  
13           to the employer ('effect . . . is to harm the employer's business.')." *Dermond v.*  
14           *Employment Sec. Dep't*, 89 Wn. App. 128, 133, 947 P.2d 1271 (1997).

15           The *Dermond* definition of disqualifying misconduct outlined above identifies a two-  
16           prong test that must be met before the ESD can enter a finding denying unemployment benefits.  
17           *Id.* The first prong of the "disqualifying misconduct" test requires a showing that the employee's  
18           act or failure to act was in a willful disregard of the employer's interest. Here, Ms. Fisher knew of  
19           the District's rule and procedure that prevented the District from processing incomplete forms.  
20           Ms. Fisher was aware that incomplete un-notarized legal guardianship forms could not led to the  
21           District's making a change in legal guardianship of a student or potential student. See ESD  
22           transcript page 24 lines 11-16. To support Ms. Fisher's reasonable belief, in a letter dated October  
23           31, 2006, addressed to Ms. Pamela Williams, Ms. Tracy Libros, SSD Enrollment Planning and  
24           Services Manager, writes:

25           To establish that your child is living with another adult who has assumed authority and  
            responsibility for the student you must have the adult assuming authority complete the  
            second half of the form, which you have left blank. However, just having another adult  
            complete the form and having it notarized is not sufficient. The adult assuming authority  
            also has to provide verification that the minor is actually living with them and in their  
            daily care and supervision for a reason other than circumventing requirements for

1 enrollment of non-resident students in the District. *See* supporting documents marked  
2 exhibit 2.0, paragraph 3.

3 Therefore, as Ms. Fisher testified on March 13, 2008, she reasonably believed that  
4 incomplete un-notarized SSD legal guardianship forms could not be processed pursuant to District  
5 rules and procedures. Furthermore, Ms. Fisher reasonably believed that incomplete un-notarized  
6 legal guardianship forms could not lead to the enrollment of Ashley Williams without further  
7 affirmative acts by Ms. Fisher. Ms. Libros's letter supports Ms. Fisher's reasonable belief. *Id.*

8  
9 In addition, when Ms. Fisher learned that her cousin, Ms. Pamela Williams, no longer  
10 required her to assume legal guardianship of Ashley Williams, Ms. Fisher abandoned the process  
11 confident that the legal guardianship forms and related documents were ineffective. Ms. Libros's  
12 letter supports this reasonable belief as well. For instance, in the October 31, 2006 letter, Ms.  
13 Libros writes,

14 "... the documents you have provided thus far do not meet the criteria for either  
15 establishing residence or for establishing that your children are living with someone else  
16 who has assumed the authority and responsibility for their care, custody, and control."  
*See* supporting documents marked exhibit 2.0, paragraph 1.

17 In the same letter, Ms. Libros also asserts that further action was required of the adult  
18 seeking to acquire legal guardianship of the child before the child would be enrolled into the SSD.  
19 *See* supporting documents marked exhibit 2.0 paragraphs 1 & 3. After Ms. Fisher was informed  
20 by Ms. Williams that the assumption of legal guardianship was no longer needed, Ms. Fisher  
21 abandoned the process with the reasonable belief that the incomplete un-notarized forms were  
22 ineffective and she did not take any further affirmative acts to complete the process. Ms. Fisher's  
23 abandonment of the process is contrary to the District's contention that she intended to assume  
24 legal guardianship as a means to aid and abet Ms. Williams' attempt to defraud the District to  
25

1 allow a non-resident to enroll in the Seattle School District. See ESD transcript, page 10 lines 19-  
2 25.

3  
4 This new evidence, which was acquired after the both the District hearings and the ESD  
5 hearings, demonstrates that the SSD did not rely upon the incomplete un-notarized forms. In fact,  
6 the District did not enroll the Ashley Williams or any of the Williams' children. See supporting  
7 documents marked exhibit 1.0 & 2.0. For instance, in a letter dated July 19, 2007, where Ms.  
8 Shannon McMinimee, Assistant General Counsel, responds to citizen's complaint regarding Ms.  
9 Pamela Williams' attempts to enroll her children into the SSD, the letter states, "the District never  
10 considered her [Ms. Williams'] application for enrollment for the 2006-2007 school year, let alone  
11 improperly denied it." Ms. Tracy Libros, SSD Manager of Enrollment Services and Planning, and  
12 the SSD Superintendent at the time, Dr. Marie Goodloe-Johnson, were carbon copied on this  
13 communication. See supporting document marked exhibit 1.0 paragraph 4.

14  
15 According to Washington State case law, Ms. Fisher's alleged misconduct may not  
16 constitute disqualifying misconduct for the purposes of receiving unemployment benefits and  
17 pursuant to RCW 50.04.294 because it may not constitute a willful disregard of the employer's  
18 interest. *Dermond*, 89 Wn.App at 136. Instead, Ms. Fisher's conduct may constitute a judgment  
19 in error and/or ordinary negligence. *Id.* Judgment in error or ordinary negligence is not  
20 disqualifying misconduct under Washington State law. *Id.*

21  
22 Negligence or an error in judgment does not constitute misconduct, nor does an intentional  
23 violation of an employer's rule. *Dermond v. Employment Sec. Dep't*, 89 at 135 (1997). In *Becker*  
24 *v. Employment Security*, 63 Wn. App. 673 (Div. III 1991), misconduct is construed strictly as to  
25 avoid involuntary unemployment. In *Becker*, the court cautioned that "unsatisfactory job  
performance whether stemming from inability to perform, errors of judgment or ordinary

1 negligence does not constitute misconduct.” Here, Ms. Fisher’s conduct is akin to errors of  
2 judgment or ordinary negligence when she believed that incomplete un-notarized forms were  
3 ineffective and terminated the process. Therefore, she did not believe there was any need to notify  
4 the District of any change because no change should have occurred. Her conduct may not  
5 constitute misconduct for purposes of the statute and case law. *Becker, at 673*. Instead, this  
6 alleged misconduct may constitute an error in judgment or ordinary negligence. Therefore, the  
7 first prong of the disqualifying misconduct test is not met.

8  
9 Circumstances beyond an employee's control cannot form the basis for the conclusion that  
10 the employee acted in willful disregard of the employer's interests. *Barker v. Employment Sec.*  
11 *Dep't*, 127 Wn. App. 588, 596, 112 P.3d 536 (2005). The District was engaged in a lengthy  
12 dispute with Ms. Pamela Williams in regards to enrolling her children in the SSD. These  
13 circumstances and Ms. Williams’ attempts to defraud the SSD was not within the control of Ms.  
14 Fisher. Therefore, Ms. Fisher was not responsible for acts performed by others where she had no  
15 intent, knowledge, and did not consent to the fraudulent conduct. *Id*; see also supporting documents  
16 marked exhibit 1.0 & 2.0.

17  
18 **B. THE DISTRICT SUFFERED NO HARM BECAUSE IT DID NOT ENROLL ASHLEY**  
19 **WILLIAMS BASED ON THE INCOMPLETE UN-NOTARIZED DOCUMENTS SUBMITTED**  
20 **BY MS. WILLIAMS WITH MS. FISHER’S SIGNATURE AND SUBMITTED WITHOUT MS.**  
21 **FISHER’S CONSENT OR KNOWLEDGE.**

22 The second prong of the disqualifying misconduct test requires that the employer is  
23 harmed by the employee’s alleged misconduct. Harm to SSD is not present in this case. In the  
24 event harm did occur, it was self-imposed by the District’s own negligence and failure to honor its  
25 own enrollment procedures. See supporting documents marked exhibit 2.0 paragraph 1 & 3.  
Harm suffered by the employer must be actual, not [illusory], imaginary or theoretical. *Haney v.*

1 *Employment Sec. Dep't*, 96 Wn. App 129 (1999); *Dermond v. Employment Sec. Dep't*, 89 Wn.  
2 App 128, 135, (1997); *Becker v. Employment Sec. Dep't*, 63 Wn. App. 673 (1991). To establish  
3 that an employee's conduct had the effect of causing harm to the employer's business, actual  
4 detriment to the employer's operations must be objectively demonstrated. *Dermond*, 89 Wn.App  
5 at 136.

6  
7 The findings of fact put forth by the Agency do not demonstrate the nexus between Ms.  
8 Fisher's alleged misconduct and the harm to the SSD. *See* initial order paragraph 16. The record  
9 shows that Ashley Williams was never enrolled in the SSD during the 2006-2007 school year. *See*  
10 supporting documents marked exhibit 1.0 paragraph 4. Also, paragraph 14 of the initial ESD  
11 order states that the SSD was negligent in processing incomplete un-notarized forms, therefore,  
12 arguably any harm suffered by SSD was self-imposed harm. While the SSD states that they  
13 processed the forms and enrolled the Williams' children, the supporting documents demonstrate  
14 that the September 5, 2006 forms with Ms. Fisher's signature were not processed and Ashley  
15 Williams was not enrolled based the forms containing Ms. Fisher's signature. *See* supporting  
16 documents marked exhibit 1.0 & 2.0; *see also* ESD transcript, page 10 lines 19-25. In the  
17 alternative, in the event the SSD did process incomplete un-notarized forms contrary to SSD  
18 enrollment procedures the alleged harm to SSD was self-imposed. Therefore, because there is no  
19 nexus between Ms. Fisher's alleged misconduct and the alleged harm to SSD, the second prong of  
20 the disqualifying conduct test does not appear to have been met. *Dermond*, 89 Wn.App at 136.  
21 Also, by its own admission, the District did not consider Ms. Fisher's legal guardianship forms  
22 and therefore, the alleged harm testified to by Ms. Garmoe was not caused by Ms. Fisher's alleged  
23 misconduct. *See* supporting documents marked exhibit 1.0 & 2.0.

24  
25 In the July 19, 2007 letter, the SSD responding to a citizen's complaint involving SSD's  
denying enrollment to Ms. Williams' children, Ms. Shannon McMinimee also outlines the SSD's

1 investigation of Ms. Pamela Williams' continuous efforts to defraud the District by submitting  
2 multiple Seattle addresses in an attempt to enroll her children into the SSD. Ms. McMinimee  
3 writes, "... The District never considered her application for enrollment for the 2006-2007 school  
4 year, let alone improperly denied it." In the ESD transcript, page 10, lines 19-25, during direct  
5 examination Ms. Garmoe states:

6 Um, Ms. Fisher, um, terminated from the District based on her allowing a non-District  
7 resident to improper claim her address as their own on more than one occasion for the  
8 purpose of fraudulently claiming, obtaining a (unintelligible) in the Seattle (unintelligible).  
9 She also aided, um, and abetted a family member in attempting to defraud the District  
and/or fail to notify the District of the change of information. See ESD transcript, page 10  
lines 19-25.

10 Ms. Garmoe on direct continues to misrepresent the facts when she states, "This occurred  
11 over a period of time. It started when the 2001-2002 school year, carried on through the 2002-  
12 2003 school year, and again in the 2006-2007 school year." Contrary to these mis-statements,  
13 letters from the SSD Enrollment Planning Services Manager, Tracy Libros, indicate that the  
14 Williams' children were never enrolled into the District because of incomplete forms and other  
15 discrepancies unrelated to Ms. Fisher's employment with the District. See supporting documents  
16 marked exhibit 1.0 and 2.0. Therefore, there is no nexus between Ms. Fisher's alleged misconduct  
17 and the alleged harm to the District. In fact, by the SSD's own admission, the Williams' children  
18 were never enrolled into the District let alone enrolled due to forms submitted with Ms. Fisher's  
19 signature. See supporting documents marked exhibit 1.0 & 2.0

20 Under these circumstances, Ms. Fisher's alleged misconduct cannot be found to have  
21 caused harm to the SSD where serious questions are raised in regards to whether there was  
22 misconduct. See RCW 50.04.294 & *Hamel* at 140. Therefore, it does not appear that the second-  
23 prong has been met. *Id.*

1 C. THE EVIDENCE MS. FISHER DISCOVERED ON MARCH 27, 2008 IS ADMISSIBLE  
2 BECAUSE 1) MS. FISHER COULD NOT HAVE KNOWN THAT IS EXISTED AT THE TIME  
3 OF HER ESD HEARING; 2) THE DISTRICT IS NOT PREJUDICED SINCE IT EITHER  
4 CREATED THE DOCUMENTS IN EVIDENCE OR HAD THEM IN ITS POSSESSION AT THE  
5 TIME OF THE HEARING; AND 3) THE NEW EVIDENCE SHOWS THAT THE DISTRICT  
6 MISREPRESENTED THE FACTS TO ESD.

7 New evidence is admissible on appeal when new evidence has become available that  
8 relates to the validity of the agency action at the time it was taken, that one or more of the parties  
9 did not know and was under no duty to discover or could not have reasonably been discovered  
10 until after the agency action, and the interests of justice would be served by remand to the agency.

11 RCW 34.05.562(2)(b). New evidence is also admissible when the agency improperly excluded or  
12 omitted evidence from the record. RCW 34.05.562(2)(c).

13 Here, Ms. Fisher did not come into possession of the new evidence until after the SSD  
14 *Loudermill* hearings and the Agency's decision. Ms. Fisher had no way of knowing about the  
15 evidence and the SSD did not provide the evidence at no time during the hearing process. In  
16 addition, the SSD was in possession of the evidence, knew of the evidence, or should have known  
17 of the evidence because the evidence was in their control through the instrumentality of the SSD.

18 D. THE MISCONDUCT OF WHICH MS. FISHER WAS ACCUSED WAS NOT RELATED IN  
19 ANY WAY TO HER EMPLOYMENT, NOR WAS SHE GIVEN ANY WARNING REGARDING  
20 ANY OF HER ACTIONS; THEREFORE, THE MISCONDUCT STANDARD FOR THE  
21 PURPOSE OF UNEMPLOYMENT BENEFITS WAS ERRONEOUSLY APPLIED.

22 Additionally, RCW 50.04.294(2)(c) defines misconduct, inter alia, as "dishonesty related  
23 to employment." Under the Employment Security Act, an individual discharged "for misconduct  
24 connected with his or her work" is disqualified from benefits. RCW 50.20.060; *Hamel v.*  
25 *Employment Sec. Dep't*, 93 Wn.App. 140, 145, 966 P.2d 1282 (1998).

Case law also suggests that the Agency has mis-interpreted the application of misconduct  
for the purpose of receiving unemployment benefits. For example, in *Hamel v. Employment*

1 *Security*, 93 Wn. App. 140 (Div. II 1998), where Mr. Hamel continued to engage in acts of alleged  
2 misconduct after several warnings by his employer, the court found that warnings of misconduct  
3 and repeated incidences of misconduct was insufficient to find misconduct as defined by the  
4 statute. Instead, the court ruled that only when an employee acts intentionally or should have  
5 known that the conduct would harm the employer can an Agency find misconduct. Here, unlike  
6 Hamel, the District did not warn Ms. Fisher that her conduct could be viewed as alleged  
7 misconduct until the pre-termination hearing in which she was wrongfully terminated one month  
8 later leaving no time to correct the alleged misconduct. See also, *Haney v. Employment Security*,  
9 96 Wn. App 129 (1999). Also, unlike *Hamel*, Ms. Fisher did not consistently engage in conduct  
10 that could be viewed as misconduct and did not knowingly act with the intent to harm her  
11 employer. *Id.* Ms. Fisher abandoned the process of seeking legal guardianship of Ashley  
12 Williams, after Ms. Pamela Williams, Ashley's mother, informed Ms. Fisher that her assistance  
13 was no longer needed. Ms. Fisher had a reasonable belief that upon abandoning the process the  
14 incomplete forms were ineffective and the process terminated. Therefore, her conduct may not  
15 constitute disqualifying misconduct for the purposes of receiving unemployment benefits. *Id.*

17 In addition, the Agency's finding of fact does not consider the legislative purpose of title  
18 50. See RCW 50.01.010 & RCW 50.04.294. The legislative intent articulated in RCW 50.01.010  
19 asserts that "whereas economic insecurity is a serious menace to health, morals, and the general  
20 welfare of the people, it is the intent of the legislature to prevent widespread involuntary  
21 unemployment." The preamble of the statute also states that the statute should be construed  
22 liberally to reduce involuntary unemployment. See RCW 50.01.010. Therefore, based on the  
23 legislative intent it can be inferred that the Agency should have viewed the facts in a light most  
24 favorable to the employee where there were inconsistencies to avoid involuntary unemployment.  
25 *Id.*

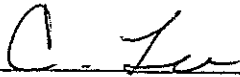
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V. CONCLUSION

Based on the arguments put forth above, Ms. Fisher respectfully requests reinstatement of unemployment benefits along with the receipt of retroactive unemployment benefits payments, and any other relief the Court finds just and equitable.

Dated this 15<sup>th</sup> day of December, 2008, Seattle, Washington.

Presented by:



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