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No. 98633-9

SUPREME COURT OF THE STATE OF WASHINGTON

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UNEMPLOYMENT LAW PROJECT, et al.

Petitioners,

v.

SUZAN LEVINE, COMMISSIONER FOR THE WASHINGTON STATE EMPLOYMENT  
SECURITY DEPARTMENT,

Respondent.

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DECLARATION OF THOMAS HARRINGTON

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Attorneys for Petitioners

I, THOMAS HARRINGTON, declare that the following statement is true and correct:

1. My name is Thomas Harrington.
2. I am over the age of eighteen (18) and competent to make this declaration.
3. I reside in Bellevue, Washington. I was a contractor for a consulting firm on assignment at Microsoft in Redmond. I was unemployed on Friday, May 1st and filed for unemployment on Sunday May 3rd. At the time, after talking to my previous employer, I believed I was also on Stand-By status and marked that in my claim.
4. I was last on unemployment when my previous contracting job for different professional staffing firm ended. This unemployment was a mix of regular, repeat employment searches, and commissioner approved training which ended on April 27, 2019.
5. When I filed for unemployment on Sunday May 3rd, I met the basic qualification for UI per the ESDWAGOV Basic employment requirements. I worked in Washington State, I exceeded the 680 qualifying hours needed with 1,214 hours, I had been laid off, and I was available for work. I believed I was also on Stand-By status and marked that in my claim, which ESD had explained on their webpage “COVID-19 frequently asked questions -Workers” standby applications would be

automatic, and stated again on the webpage “COVID-19 Emergency Rules.”

6. On Monday May 4th, I received a letter titled in the eService’s portal “Monetary Determination.” Once opened, it’s title was “Unemployment Claim Determination,” and I thought everything was going smoothly so far.

7. On Tuesday May 5th, I received a letter titled in the eService’s portal “Determination Letter.” Once opened, I was confused because it had no title, and I went into panic. The letter stated that If I wanted to appeal, I could do it online, by fax, or mail but it must be postmarked no later than “June 4 2020”. It also stated that you could not appeal by email or phone. I was desperate to try to fix this as soon as possible so I followed the letters directions to file an appeal on eService. The letter says, “The easiest way to appeal is to log into eService, select this decision and follow the instructions.” However, when I went to that location online, there was nothing to click on other than the hyperlinked letter ID number which would just open the PDF of the same letter. In the “Action” section on the end, it states “Contact agency for appeal” but does not explain anywhere how to submit an appeal online and I try clicking on every link I can find with no success. I tried looking at the ESDWA website to see if they have any updated information up about the appeals

process or maybe the electronic appeals system is currently down, maybe for maintenance. Unfortunately, ESD's Benefit denials and appeals section still states the incorrect info about being able to appeal online. This increased my panic because I worried it will take weeks to resolve and get paid.

8. To explain more about my panic, because of the Covid-19 pandemic, I was already taking care of my elderly mother who recently had knee surgery, so she had limited mobility and immunocompromised. I was also taking care of my niece who is in the 9th grade in the Enumclaw school district and still taking classes online because her mom was sick with flu like symptoms and unable to get a Covid-19 test. This means I had been the only working adult in the household and I was the only person who we felt was safe to do the family grocery shopping during the limited shopping daytime hours with extra safety precautions of coming home. My health insurance was also going to end by the end of May, during a pandemic, and I was worried if I could not get my unemployment up, I could neither hope to pay for COBRA and a new health care plan on the state health exchange. Also, even if I could afford a plan, would one of them still be in my healthcare network or would I have to be in a new one which would mean, that If I got sick with Covid-19, I would be unsure if my medical history from my old provider would make it to the new one

within the typical 10-14 incubation period before serious breathing problems could occur.

9. I was also spending a lot of time working with the Washington State Disabled American veterans to help work on new health disability claims with the US Veterans Affairs (VA) department and trying to get my military medical records found and mailed from the US National Archives to my former health care providers. When Covid-19 became a Pandemic and the threat of infection more realized in early March, I had reached out to the VA nearly my entire medical history is with them and unfortunately they had it filed away in the US National Archives which take a lot of time and paperwork to retrieve, with even longer delays now because of the pandemic.

10. So now I had to divide my time between looking for work during skyrocketing unemployment, helping my immobile impaired mom and my young niece around the house and with school, spending hours on the phone with the VA and checking historical VA medical claims similar mine, looking for new health insurance on the WA health care exchange, conserving money to focus on bills and groceries, and researching how to write this appeal to ESD for standby status which their website incorrectly said at that time and continues to incorrectly say that it can be done online

in the ESD eService's portal. Because the portal was not an option for appeal and ESD's "How to appeal" page was not helpful.

11. With the only remaining appeal option left being sending a fax or mailing a letter, the problem was that I clearly would prefer to fax an appeal rather than risk a delay with a mailed letter, however, because of the shelter order from the Governor Inslee, nearly every business I could look up that offered fax services in their offices were closed because they were not deemed essential such as the public library, FedEx, Kinkos, and every WorkSource office in the state. It was very surprising that neither the WAS ESD and WA Work Source offices offered any online fax service or simply to email in required documents. So even if there was a business location with a fax available, in order to fax in documents to ESD as required, those seeking unemployment would have to risk Covid-19 infection because no online fax machine service or secure email service had been setup, nor did ESD even say it was working on trying to make appeals easier.

12. The only other option left posed a similar infection risk of printing documents with my own printer, which I am fortunate to have that others on unemployment do not, and driving to a post office, which I am fortunate to have as an option that others on unemployment do not, to wait in line around others inside the post office, and to pay money to mail

which is again another fortunate thing that I could do as an option that others on unemployment do not all because ESD requires a hand-written signature on their appeal document. This is appalling to me because secure document signatures online is already a feature of numerous software programs used by federal and local governments such as DocuSign and Adobe. Because of the risk of possible infection to my elderly mom, I decided to hold off for now.

13. I was becoming more desperate to figure out my next steps as this delay in unemployment affected everything else that I needed to address. First, Thursday morning May 7 at 7am when WA ESD's phone lines opened up, I tried calling into to hopefully speak with an agent about my case. I had already seen the news reports about the long hold times and the WA ESD suggestion to try and call as early as possible. However, I ran into an unexpected problem that neither WA ESD's website or the denial letter warned me about. The problem was that when I called in, instead of reaching a self-service automated call system to be placed on hold to wait a long time as is described in their "Contact Us" webpage, I instead got an old fashioned busy signal which meant I would have to call again. I ended up calling 42 times and every time I got a busy signal with no chance of even being put on hold. I decided to take a break and try again later after looking again into my eService's portal.

14. Later on, Thursday morning May 7th, I saw an alert in my eServices portal for my claim to do a PEUC application which I submitted. This application was confusing because it described itself as an extension to the current unemployment benefits program which I was currently denied. At first, I did not think I met the beginning criteria because my unemployment claim had not expired July 1 2019 or later and I had not exhausted all regular unemployment insurance benefits. However, I did think the other three did apply to me. Because my unemployment claim was currently denied I felt that I was “not eligible for regular unemployment insurance benefits under the laws of any state, including Washington, or Canada”, that I was “You are able and available for suitable work”, and that I was “You are actively seeking work as directed”. Also, at the bottom, it said that it was okay if I had already not exhausted my benefits before applying because “You can apply for PEUC prior to exhausting your regular unemployment insurance (UI) benefits. Your eligibility will be evaluated at the time you exhaust your UI claim, or it expires. However, you will not receive any PEUC benefits until you have exhausted your regular unemployment insurance benefits.”

15. Attached to that PEUC Application was a new set of questions about requesting Standby status. Because I had already been denied for standby status, I began to worry that I actually did not qualify



for it somehow and for this PEUC Application, I should say “No”. I was afraid if I called into the Unemployment line to try and ask an agent it would not only take hours on the phone just trying to call in, I was also afraid that they would tell me they can’t talk about that because that would be an appeal questions and their previous letter already stated you could not appeal by phone.

16. Later on, Thursday the 7th, and seeing the worse news reports about how swamped the Washington ESD department was, I thought I would try to submit my appeal through a fax. Because I could not find any businesses with faxes available, I looked online for a paid service to send fax electronically. I found an online service that seemed as trustworthy as any other online fax service seemed and was still cheap. I faxed my first appeal letter, and got an email saying it was confirmed as being sent. I wasn’t sure that I could be confident that my fax was 100% sent through this website because I had never sent a fax through them before and there not a familiar faxing business. So, just in case someone at ESD might eventually look at the online messages I sent through their eService’s portal, I decided to upload and send the same appeal letter I attempted to fax.

17. Around 2 am on Friday May 8th, my ESD eService’s portal showed the option to submit a Pandemic Unemployment Claim (PUA)

which I did. In the claim, it listed out it's requirements and it seemed like I met them all, especially because I was still denied for my other claim. I double checked this on the ESD website to confirm and it looked like I fully qualified. This claim also asked if I wanted to submit for standby status and because of my bad experience with claiming that despite my belief I should qualify for it, I said no for this claim.

18. On Friday morning after waking up before ESD's phone lines open back up, May 8th, I checked my eService's portal and saw that I got a new letter. It said was I denied standby status again for my first claim but otherwise the text body matched the one I got on May 5th. As I mentioned before 4, I matched the standby requirements explained on ESD's website and eService's portal.

19. Because of that letter, and that it was Friday, the last date I could hope to reach them by phone and take care of what I thought was a simple problem, and that I was facing dire circumstances if I could not resolve my unemployment payments, I tried to make another effort to call in. I called 112 times before I finally got through and reached their automated hold line at 1:03 pm. I spend the next 3 hours on hold and I reached an operator 2 times that asked why I was calling, I explained that I was hoping to speak to a claims agent as they are the only people at ESD who can look at my unemployment claim, they said okay and placed me

back on hold. Unfortunately, by their office line close time 4pm the call I was still on hold for hung up. Facing the worst-case scenario of both losing my health insurance and not being able to afford new insurance during a pandemic, I spent the rest of the weekend applying for jobs.

20. On Saturday, May 9th, I got a letter in regard to my PUA claim which now showed up as a separate claim. The letter explained how much benefits I could receive and I felt excited that at least this claim was moving forward.

21. On Sunday, May 10, the first alert to submit my weekly claim appeared in my eService's portal despite it saying my claim was currently denied. While this seemed like good news, the weekly claim was listed under my denied UI claim and not my Pandemic Unemployment Assistant claim which seemed to be the live one. When I submitted the claim, I made sure to submit at least 3 weekly job searches, even though the WA ESD website states that because of emergency rules, job searches were no longer required. I did the job searches both because I was becoming desperate for work because of the problems with collecting unemployment and also because despite the ESD website saying job searches were not required, both the standby denial letters stated that I must look for work.

22. On Monday, May 11th, I received another letter in my eService's portal. This was a very confusing letter as it was about my unemployment claim from the beginning of 2019 which is listed on my eService's landing page as expired. Why was the ESD sending me a letter about a claim from last year but not responding to any of my letters for my current claim? It was even more absurd because my education program was already over before the date of that letter as can be seen on my claim's week summary.

23. Later on, Monday, May 11th, my former employer was able to find a new temporary work assignment for me backfilling another worker who could no longer work starting that day. Despite this, I still needed the missing unemployment money plus the extra 600 dollars from the CARES act for that last week. I also saw a notice posted on that day on the ESD website that they were not going to be accepting inbound calls to speak with agents for 7 days as they attempt to catch up. So that meant my only real hope was waiting for them to send an online message or to call me which I have still not received as of today 6/22/20.

24. I have kept filing my weekly claims, and I have not received any claim options for my PUA claim. The only difference is that for the claim weeks after my main May 3rd-May 9th claim which I was unemployed for, is for the later weeks I list my gross work hours and

income even if I haven't been paid yet, which means I will not qualify for any unemployment money. I am doing this because I am afraid if I stop my unemployment claim, I will never be back-paid the money ESD owes me.

25. On Friday, May 22, I received an alert that I need to submit additional identification information. While this was a surprise, I had seen the news reports about the ID theft criminals who were stealing people unemployment money. However, I was still shocked that my account was even suspected of ID theft concerning how much I had tried to reach out to the ESD claim office. They asked for me scan and send additional ID copies to ESD and lucky for my printer could scan, which I did by the end of that weekend on May 24th.

26. By June 6th, I still have not received any payment or responses from ESD about my claim. Since I had already submitted an appeal to my first claim denial letter, I decided it was better to submit another one just in case related to my second denial letter, before it's listed final appeal due date Monday June 8th. I faxed later that day on June 6th with the same service I used before because fax business locations were still closed.

27. On Friday, June 19th, my onsite supervisor for my contract job lost their job because of Covid-19 restrictions and there is a chance

that my position will go away or be otherwise negatively impacted by the pandemic. Still to this date, June 22, I have not received any responses to my faxes, messages sent over eService, and I have not received any phone calls. I have not received any payments. If I end up losing my job again during this pandemic, I am even more terrified about hoping to collect the unemployment I am due because ESD has still not resolved or responded. I am losing hope. I do not know how I can pay my bills, buy food, afford health insurance, and every other need I am likely to encounter while unemployed.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED this 22nd day of June, 2020 in Bellevue, Washington.

/s/   
THOMAS HARRINGTON

**CERTIFICATE OF SERVICE**

I, Tony Dondero, certify under penalty of perjury under the laws of the State of Washington and the United States that, on June 23, 2020, I served the document to which this Certificate is attached to the party listed below in the manner shown.

ROBERT FERGUSON  
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- By United States Mail
- By Legal Messenger
- By Facsimile
- By Overnight Fed Ex Delivery
- By Electronic Mail

Dated this 23rd day of June 2020.

*s/Tony Dondero* \_\_\_\_\_  
Tony Dondero,  
Legal Assistant

**THE SHERIDAN LAW FIRM, P.S.**

**June 23, 2020 - 2:19 PM**

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