

FILED
SUPREME COURT
STATE OF WASHINGTON
6/26/2020 2:33 PM
BY SUSAN L. CARLSON
CLERK

No. 98633-9

SUPREME COURT OF THE STATE OF WASHINGTON

UNEMPLOYMENT LAW PROJECT, et al.

Petitioners,

v.

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

Respondent.

SUPPLEMENTAL DECLARATION OF THOMAS HARRINGTON

THE SHERIDAN LAW FIRM, P.S.

John P. Sheridan, WSBA #21473
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705 Second Avenue
Seattle, WA 98104
(206) 381-5949

Attorneys for Petitioners

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

1. I am submitting this supplemental declaration to provide an update on my situation. I still have not received any payments related to my claims and continue to file my weekly claims, as instructed, to keep my claim active. On Thursday, June 25, 2020, around 10:30 pm PST, I decided to go into my ESD eServices web portal to check if any alerts or changes had been made. I had not received any email alerts, but I try to log in a few times a week just in case.

2. When I logged in, there was no alert on the eService landing page that something needs to be acted upon. When I clicked on my notices/letters tab, it told me I had “No Unread Messages” and “No Unread Letters.” I clicked on my active claim because this is the claim which ESD has connected to my weekly claims. As with my main eService landing page, again there were no alerts on my active claim’s landing page. I clicked on the tab “Pending Issues” and it showed as empty. When I click on the tab “Notices/letters,” it stated, “No Unread Messages” and “No Unread Letters.”

3. By sheer luck, I clicked on the tab “decision status” and I noticed something odd. There indeed was something new, dated sent on June 26, 2020 despite the fact that it was still June 25, 2020. Attached as

Exhibit 1 is a true and accurate screen-capture of the portion of the page taken with my phone at 10:45 on June 25, 2020. Under “Resolution Type” it stated that “Claimant did not verify identity.” The link to appeal did not work, so I decided to wait until June 26, 2020 to try it again.

4. On the right side of the page under “Action” it showed a hypertext text “File an appeal.” This was strange because for these last two months, ESD had provided no way for me to submit electronic appeals, and now all of a sudden they were and they had not provided any email, online message, eServices alert, or even a notice on their website that this function was now working.

5. There are no other details I can find or anything to click to explain why the identification I electronically submitted on May 24, 2020, was rejected. Attached as **Exhibit 2** is a true and accurate copy of the screen-capture of my May 24, 2020 submission.

6. The link to appeal worked today, on June 26, 2020. A true and accurate screen-capture of the appeal form is attached as **Exhibit 3**. As you can see, on their electronic appeal form, no additional relevant information is provided. There is no additional message or letter or any other text saying how soon I even needed to respond too, but it does let me resend my documents again for reconsideration, which I plan to do in addition to appealing.

7. It feels as if my account was automatically flagged by ESD for no reason and felt like ESD wanted me to miss an appeal window.

8. When ESD previously contacted me telling me that it needed additional identification information it gave me 7 day to respond (i.e., before May 29, 2020), and I did. Attached as **Exhibit 4** and **Exhibit 5** are true and accurate screen-captures of the respective pages showing this information.

9. In its previous notice, ESD stated that I had the “right” to “request an interview before we make a decision about whether you are eligible for unemployment benefits. We conduct interviews by phone unless you request an in-person interview.” Attached as **Exhibit 6** is a true and accurate screen-capture of the notice. I tried calling many times.

10. At the time, ESD provided no mechanism to submit this request through the portal. To date, ESD not responded to any of my electronic messages sent over their portal or my letters faxed in.

11. At 1:19 a.m., I received contextless e-mail stating “You have a new letter in your eServices account.” **Exhibit 7** is a true and accurate screen-capture of the e-mail I received, and **Exhibit 8** is a true and accurate copy of the letter ESD sent. The letter is confusing.

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 26th day of June, 2020 in Bellevue, Washington.

/s/ [Handwritten Signature]

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 26, 2020, I served the document to which this Certificate is attached to the party listed below in the manner shown.

ROBERT FERGUSON
Attorney General

Eric D. Peterson, WSBA #35555
Senior Assistant Attorney General

Leah E. Harris, WSBA #40815
Assistant Attorney General

Office of the Attorney General
800 5th Avenue, Suite 2000
Seattle, WA 98104
EricD.Peterson@atg.wa.gov
Leah.Harris@atg.wa.gov
LalSeaEf@atg.wa.gov

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

Dated this 26th day of June 2020.

s/Tony Dondero _____
Tony Dondero,
Legal Assistant

EXHIBIT 1

WhatsApp Image 2020-06-25 at 10.45.57 PM

 Decisions 					
Sent	Letter ID	Resolution type	Employer (if applicable)	Status	Action
Jun 26 2020		Claimant did not verify identity		Determined	File an appeal
May 8 2020	L0019277317	Standby - Not employed full-time		Determined	Contact agency for appeal

EXHIBIT 2



☰ **Identity**

Welcome, Thomas Harrington Settings

Home UI claim Identity



TOM HARRINGTON

UI claim
XVSNRL-003

> Request
Identity



Status

✓ **Completed**

Confirmation #0-024-991-721
Submitted May 24 2020 10:43:45
Completed May 25 2020 03:27:10



I Want To

[View Submission](#)

EXHIBIT 3

≡ Appeal request

Welcome, Thomas Harrington Settings

Home UI claim Appeal request

Information on Filing an Appeal

We strongly encourage you to do the following before you file your appeal:

- Review your benefits determination letter
- Read the instructions for How to File an Appeal
- Check out our website for more information about the appeal process.

NOTE: Once you submit your appeal request, the Office of Administrative Hearings (OAH) will contact you about the hearing. (Please note: OAH is not part of Employment Security Department.) The information on this page will be shared with OAH in order to contact you.

Appellant Contact Info

Would you like to communicate with OAH via email?

Yes No

Appellant First Name

Appellant Last Name

Appellant Phone Number

Appellant Email Address

Appeal Filed

Appellant Address

Country

Street

Street

Unit Type

Unit #

City

State

Zip

County

Claimant Information

Social Security Number

First Name

Last Name

Claimant Phone #:

Email Address:

Appeal Detail

Date of Determination

Employer Name

Do you need an interpreter?

Are you represented by an interested party?

Why do you disagree with the determination?

Required

If you want us to reconsider this decision, send us copies of your Social Security Card and one other type of identification. Examples: state ID card, driver's license or passport. Send them by using the "Add" button below.

Attachments

Type	Name	Description	Size

EXHIBIT 4



☰ **We need additional information from ...**

Welcome, Thomas Harrington Settings

- Home
- UI claim
- Messages
- We need additional information from you



TOM HARRINGTON

UI claim
XVSNRL-003

➤ Message



I Want To

Delete



Fact Finding

Received: Friday, May 22, 2020 11:18:59 PM
Subject: We need additional information from you

The Employment Security Department needs information from you about an issue with your claim. **You must respond by 5/29/2020.**

Please sign in to your eServices account at esd.wa.gov.

From the "Summary" view, select the blue hyperlink that says "UI claim." Then under "Account alerts," select the link that says "We need more information from you." Next, choose the hyperlink under "Issue" to answer our questions.

Thank you.

EXHIBIT 5



≡ **View**

Welcome, Thomas Harrington  Settings

 Home > [UI claim](#) > [Identity](#) > [View](#)

Web identity question flow

- Web identity question flow
- Web identity question flow
- Questions**
- Complete
- Web identity question flow

Web identity question flow

Questions

We could not verify your identity.

Can you provide copies of your Social Security card and:

- State-issued ID card or driver's license; or
- An official form of identification, such as a passport.

If you are unable to upload these documents, fax them to the Office of Special Investigations Identity Claims Unit at (800) 301-1796.

If you have questions about this, please contact the Office of Special Investigations Identity Claims Unit at (800) 246-9763. Do not call the claim center regarding this situation, as they will be unable to assist you.

[← Previous](#) [Next →](#)

EXHIBIT 6

 **View**

Welcome, Thomas Harrington Settings

[Home](#) > [UI claim](#) > [Identity](#) > [View](#)**Web identity question flow****Web identity question flow**

Web identity question flow

Questions

Complete

Web identity question flow**Web identity question flow****Advice of Rights****You must respond by May 29 2020.**

We need you to answer the questions on the following pages. Then we will decide whether we can pay or continue to pay you unemployment benefits. If you don't respond by the deadline, we'll use the information we have to make our decision. This means we might not pay you unemployment benefits, and you might have to pay back benefits you already received.

Your rights

You may request an interview before we make a decision about whether you are eligible for unemployment benefits. We conduct interviews by phone unless you request an in-person interview. You may:

- Have anyone help, including an attorney.
- Present evidence, documents, or witnesses.
- Cross-examine witnesses or parties at the interview.
- Ask for copies of all records or documents related to the issue.

Tell the Truth

If you make a false statement or withhold information about your claim, we consider that fraud. If you commit fraud, you may be denied benefits for future weeks, have to pay back benefits you already received, and pay a penalty.

 I have read and understand the above statements.[← Previous](#)[Next >](#)

EXHIBIT 7

eServices Notification - New Mail  Inbox x



no-reply@esd.wa.gov

 to me ▾

1:19 AM (12 hours ago)

You have a new letter in your eServices account

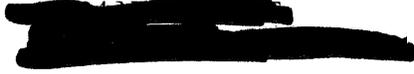
 Reply

 Forward

EXHIBIT 8



Date: Jun 26 2020
Letter ID: L0022612852
Claimant ID: XVSNRL

TOM HARRINGTON


Dear TOM HARRINGTON:

Verifying identity-24526177

We made a decision about your unemployment benefits claim based on information we have at this time.

We denied your unemployment benefits starting May 3 2020 until the reason for our decision no longer exists.

We couldn't prove your identity from the information you gave us. As a result, you don't qualify for unemployment benefits.

If you want us to review our decision, send us a copy of your Social Security card AND a copy of your:

- State ID card; or
- Driver's license; or
- Passport.

Send the information:

- Through eServices, as an attachment; or
- Through our secure upload service: <https://fortress.wa.gov/esd/file/SecureUpload/identity> ; or
- By fax: (800) 301-1796; or
- To the address under *You can appeal* later in this letter.

The laws that apply are RCW 50.20.010, WAC 192-110-005, WAC 192-110-020, 42 U.S.C. Section 1320b-7 and 20 CFR 603.3.

If we need to consider other questions about your claim, we'll send you separate letters to address each issue.

Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, individuals who are eligible for Regular UI can receive an additional \$600 included in their weekly payment. This is called Federal Pandemic Unemployment Compensation (FPUC). If you were denied a full week of

Search more than 60,000 Washington jobs on WorkSourceWA.com. Visit WorkSource for free employment workshops and expert job-hunting advice.

Read the Handbook for Unemployed Workers at esd.wa.gov to find everything you need to know about benefits, including training for a new career.



benefits under your regular unemployment compensation, you are ineligible for any FPUC payments for that week.

You can appeal this decision if you disagree with it.

We sent a copy of this letter to the people or businesses listed below. They can appeal the decision, too. We'll notify you if they do.

TOM HARRINGTON [REDACTED]

What you need to do now

- Read this entire letter carefully and decide if you want to appeal. You have until Jul 27 2020 to appeal.
- Whether or not you appeal, continue to submit weekly claims for weeks you want to get benefits. We'll decide if you're qualified for those benefits.

How to appeal:

You or your employer(s) can appeal on eServices, by fax or postmarked by Jul 27 2020. You cannot appeal by email or phone.

The easiest way to appeal is to log into eServices, select this decision and follow the instructions.

If you choose to write a letter, you must tell us you disagree with the decision and would like to appeal. You must also include:

- Your Social Security number.
- The employer's name, address and phone number.
- Which decision you want to appeal.
- Your signature. We will return any unsigned appeals.

Mail or fax the letter to:

Employment Security Department
Claims Center Appeals
P.O. Box 19018
Olympia, WA 98507-0018
Fax: (800) 301-1795

After we receive an appeal:

- We will send the appeal and all information we have about this decision to the Office of Administrative Hearings (OAH), which will schedule a hearing.
- OAH will mail a Notice of Hearing by **U.S. mail** to you and the people or businesses listed above about the hearing date and time.

More about filing an appeal:

- Go to the Benefit denials and appeals page on esd.wa.gov or type "benefit appeals" in the search box. You can find an appeal template on the Benefit denials and appeals page, available in English or Spanish.
- Visit <http://app.leg.wa.gov/rcw/> and type 50.32.020 in the search box.

Search more than 60,000 Washington jobs on WorkSourceWA.com. Visit WorkSource for free employment workshops and expert job-hunting advice.

Read the Handbook for Unemployed Workers at esd.wa.gov to find everything you need to know about benefits, including training for a new career.



Questions:

If you have questions about this letter, see the Handbook for Unemployed Workers at esd.wa.gov/handbook or pick up a copy at your local WorkSource office. You can also call the claims center at (800) 318-6022.



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Search more than 60,000 Washington jobs on WorkSourceWA.com. Visit WorkSource for free employment workshops and expert job-hunting advice.

Read the Handbook for Unemployed Workers at esd.wa.gov to find everything you need to know about benefits, including training for a new career.



THE SHERIDAN LAW FIRM, P.S.

June 26, 2020 - 2:33 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98633-9
Appellate Court Case Title: Unemployment Law Project et al. v. Suzan Levine

The following documents have been uploaded:

- 986339_Affidavit_Declaration_20200626142356SC511355_9094.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was 06262020 ULP - Supplemental Harrington declaration.pdf

A copy of the uploaded files will be sent to:

- EricD.Peterson@atg.wa.gov
- andra@sheridanlawfirm.com
- greg@seaemplaw.com
- justin@sheridanlawfirm.com
- lalseaef@atg.wa.gov
- leah.harris@atg.wa.gov
- tony@sheridanlawfirm.com

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Sender Name: Mark Rose - Email: mark@sheridanlawfirm.com

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