

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE EMPLOYMENT SECURITY DEPARTMENT

IN THE MATTER OF:

Jason D. Gardner

Claimant

DOCKET NO: 01-2011-36566

INITIAL ORDER

ID: 536-84-0304 3

BYE: 07/21/2012

UIO: 770

Hearing: This matter came before Administrative Law Judge Edgar Korzeniowski on December 29, 2011 at Olympia, Washington after due and proper notice to all interested parties.

Persons Present: the claimant-appellant, Jason D. Gardner; the employer, The Academic Institute Inc, represented by Jennifer Vice, Director; Jennifer O'Shaughnessy, Executive Director; and the employer representative, John Baier.

STATEMENT OF THE CASE:

The claimant filed an appeal on November 18, 2011 from a Decision of the Employment Security Department dated November 15, 2011. At issue in the appeal is whether the claimant voluntarily quit without good cause pursuant to RCW 50.20.050(2)(a), or was discharged for misconduct pursuant to RCW 50.20.066; whether the claimant is liable for the refund of regular benefits pursuant to RCW 50.20.190 in the amount of \$516.00; and whether the claimant is liable for the refund of conditional benefits pursuant to RCW 50.20.190 and WAC 192-220-017 in the amount of \$1,686.00. Also at issue is whether the claimant was able to, available for, and actively seeking work during the weeks at issue.

Having fully considered the entire record, the undersigned Administrative Law Judge enters the following Findings of Fact, Conclusions of Law and Initial Order:

FINDINGS OF FACT:

1. Mr. Gardner, hereinafter the claimant, was employed part time as a teacher for Academic Institute, hereinafter AI and the employer, from June 15, 2011 through October 19, 2011. A job separation occurred on October 19, 2011. The claimant earned \$16.50 per hour at the time of his job separation.

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2. The claimant taught high school level coursework in U.S. History, World History and Environmental Science at the AI. The AI is an accredited private college preparatory high school. The AI primarily works with students that have learning disabilities as well as students from large public school systems who have underdeveloped critical thinking and learning skills. Exhibit 3, p.3. Classes appear to consist of seven to eight students. Exhibit 2, p. 32.
3. The claimant's students were underperforming. Exhibit 2, p. 31-21, 35. The employer made changes to the claimant's curriculum for the week of October 17, 2011. Exhibit 2, p. 25-26. The employer also requested the claimant adapt his teaching methods to nurture students' critical thinking and note-taking skills. Exhibit 3, p. 3-4. The claimant did not voice any objections to the revised curriculum nor changes to teach methodology either verbally or in writing.
4. On the morning of October 19, 2011, the employer formally counseled the claimant about some recent issues with his job performance. The employer alleged that the claimant fell behind the testing schedule for one or more of his classes. Exhibit 3, p.2. This is important because AI teacher are required to administer tests by certain dates in order for AI to maintain accreditation. The employer requested that the claimant provide the employer with notice of "any students of concern" in the future. Id. Later than afternoon, the claimant abruptly resigned. He told the employer that he was moving out of state. Exhibit 2, p. 15.
5. After filing for unemployment, the claimant alleged the actual reason for resigning was a change in job duties or working conditions affected his sincerely held moral beliefs. In support of his position, the claimant provided a letter purportedly from co-worker Natalee Woods which he "helped" write. Exhibit 2, p. 39-40. Ms. Woods did not testify. The claimant lost contact with Ms. Woods sometime after she signed the letter.
6. The claimant received the payments at issue. Exhibit 2, p. 8, 46. The claimant was aware that \$1,686.00 in payments were conditional and that he would be liable for the refunding them if he was deemed ineligible for benefits.
7. The claimant's allegation that he resigned over sincerely held moral beliefs is not credible in light of his conduct and material inconsistencies in the record. The undersigned Administrative Law Judge found the following evidence to be persuasive when determining credibility.
8. The claimant left because he felt that underperforming students were not being held accountable and didn't feel supported by his employer. Exhibit 2, p.36. His counseling on October 19, 2011 was "the final straw". Exhibit 2, p. 35.
9. The claimant did not voice any objections to the revised curriculum nor changes to teaching methodology either verbally or in writing. The claimant resigned only after he was counseled about his job performance. The claimant gave the employer a different reason for

resigning then the reason he gave the Employment Security Department.

10. The claimant was inconsistent with his statements on the timing of the complaint purportedly filed against his employer. In his appeal letter, the claimant stated he could not continue to work for the employer since he filed the complaint. Exhibit 2, p. 12. However, at the hearing, the claimant testified that he filed the complaint a month after he resigned. The claimant did not provide a copy of the complaint. The employer denied being contact by the Office of Superintendent of Public Instruction (OSPI) in relation to the complaint.

11. During the weeks at issue the claimant was willing and able to accept any offer of suitable work and sought work as directed by the Department.

CONCLUSIONS OF LAW:

1. The provisions of RCW 50.20.050(2)(b)(x), WAC 192-150-085, WAC 192-150-140, WAC 192-150-150, WAC 192-320-070, and WAC 192-320-075 apply.

2. ~~RCW 50.20.050(2)(b)(x) provides that a claimant will be deemed to have left work with good cause where the claimant quit because of a change in work which violated the claimant's religious convictions or sincere moral beliefs. The claimant must notify the employer of the issue unless to do so would be futile.~~

3. WAC 192-150-140 sets forth the criteria to be used to determine whether a claimant has good cause for quitting work based on a change in usual work that violates sincere moral beliefs:

(a) The change in your usual work must be the result of action taken by your employer;

(b) The work must require you to violate your religious beliefs or sincere moral convictions; mere disapproval of the employer's method of conducting business is not good cause for leaving work under this section.

(c) You must notify your employer that the work violates your religion or sincere moral beliefs, unless doing so would be futile;

(d) The work or activity must directly, rather than indirectly, affect your religious or moral beliefs; and

(e) The objectionable condition must exist in fact, rather than be a matter of speculation.

WAC 192-150-140 (1)- (2).

4. "Usual work" means job duties or conditions originally agreed upon by you and your employer in your hiring agreement or mutually agreed to by you and your employer prior to the employer action changing your job duties. WAC 192-150-140(1).

5. A claimant will not have good cause for quitting work under this section if:

1. You are inconsistent or insincere in your objections;

2. The objection is raised as a sham or a means of avoiding work; or

3. You knew of the objectionable aspects of the work at the time of hire, or you continued working under the objectionable conditions longer than a reasonably prudent person holding similar beliefs would have continued.

WAC 192-150-140(3).

6. In a voluntary quit case, the burden of proof is upon the claimant to establish "good cause" for quitting pursuant to RCW 50.20.050. The claimant must show, by a preponderance of the evidence, what more likely happened. *In re Murphy*, Empl. Sec. Comm'r Dec. (2nd) 750 (1984). A preponderance of the evidence is that evidence which produces the stronger impression, has the greater weight, and is more convincing as to its truth when weighed against the evidence in opposition to it. *Yamamoto v. Puget Sound Lumber Co.*, 84 Wash. 411, 146 P. 861 (1915).

7. The claimant has not established that he quit work based on a change in his work that violated a sincere moral belief. The claimant did not give notice to the employer that the revised curriculum or changes to teaching methodology violated a sincere moral belief. The claimant did not prove by the preponderance of the evidence that his failure to give notice would have been futile. The claimant's conduct was inconsistent with his moral objections. The claimant was willing to violate his purported moral beliefs on October 17, 2011 and October 18, 2011, but continued violation was not palatable after he was counseled for performance issues on October 19, 2011. The claimant did not state his moral objections at the time of his resignation. The claimant did not immediately file a complaint with OSPI at the time of his resignation. Under the totality of the circumstances, the claimant is subject to disqualification under RCW 50.20.050(2)(b)(x).

8. The provisions of RCW 50.20.190, WAC 192-220-020 and WAC 192-220-030 are applicable.

9. The claimant is not at fault in causing the overpayment. The issue of the claimant's eligibility for waiver is remanded to the Employment Security Department for determination,

subject to claimant's further right of appeal.

10. The provisions of RCW 50.20.190 and WAC 192-220-017(3)(c) apply.

11. If an overpayment of benefits results from a conditional payment and subsequent denial of benefits, the claimant is not eligible for waiver of that overpayment pursuant to RCW 50.20.190.

12. Since the benefits in this case were conditionally paid, the claimant is liable for the refund of benefits in the amount of \$1,686.00.

13. RCW 50.20.010(1)(c) requires each claimant to be able and willing to work, available for, and actively seeking work. The claimant was able and willing, available, and actively seeking work during the weeks at issue, has met the requirements, and is not subject to denial under the above-cited statute and related regulations.

Now therefore it is ORDERED:

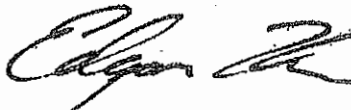
The Decision of the Employment Security Department under appeal is **AFFIRMED**.

1. The claimant has not established good cause for quitting. Benefits are denied pursuant to RCW 50.20.050(2)(a) for the period beginning October 16, 2011 and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in covered employment and earned wages in that employment equal to seven times his or her weekly benefit amount. ("Covered employment" means work that an employer is required to report to the Employment Security Department and which could be used to establish a claim for unemployment benefits.)

2. The claimant was able to, available for and actively seeking work during the weeks at issue as required by RCW 50.20.010(1)(c).

Employer: If you pay taxes on your payroll and are a base year employer for this claimant, or become one in the future, your experience rating account will not be charged for any benefits paid on this claim or future claims based on wages you paid to this individual, unless this decision is set aside on appeal. See RCW 50.29.021. The claimant was not at fault in causing the overpayment but is required to repay the regular overpayment pursuant to RCW 50.20.190 in the amount of \$516.00. The claimant is liable for the refund of conditional benefits pursuant to RCW 50.20.190 and WAC 192-220-017 in the amount of \$1,686.00.

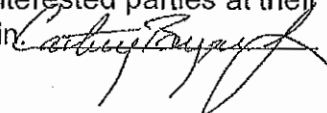
Dated and Mailed on January 03, 2012 at Olympia, Washington.



Edgar Korzeniowski
Administrative Law Judge
Office of Administrative Hearings
2420 Bristol Court SW
PO Box 9046
Olympia, WA 98507-9046

Certificate of Service

I certify that I mailed a copy of this order to the within-named interested parties at their respective addresses postage prepaid on the date stated herein.



PETITION FOR REVIEW RIGHTS

This Order is final unless a written Petition for Review is addressed and mailed to:

**Agency Records Center
PO Box 9555
Olympia, Washington 98507-9555**

and postmarked on or before **February 2, 2012**. All argument in support of the Petition for Review must be attached to and submitted with the Petition for Review. The Petition for Review, including attachments, may not exceed five (5) pages. Any pages in excess of five (5) pages will not be considered and will be returned to the petitioner. *The docket number from the Initial Order of the Office of Administrative Hearings must be included on the Petition for Review.* Do not file your Petition for Review by Facsimile (FAX). Do not mail your Petition to any location other than the Agency Records Center.

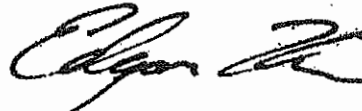
Mailed to the following:

Jason D Gardner



Claimant-Appellant

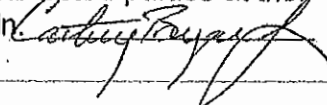
Dated and Mailed on January 03, 2012 at Olympia, Washington.



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Mailed to the following:

Jason D Gardner


Claimant-Appellant