

4-30-2010

Fearn v. Steed Clerk's Record Dckt. 37368

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

TRACY E. FEARN,
Claimant/Respondent,

vs.

DAVID C. AND MARSHA STEED,
Employer/Appellant,

and

IDAHO DEPARTMENT OF LABOR.
Respondent.

LAW CLERK

SUPREME COURT # 37368

AGENCY'S RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Claimant/Respondent

Tracy E Fearn, Pro Se
PO Box 3569
Idaho Falls, ID 83404



For Employer/Appellant

DeAnne Casperson
Holden Kidwell Hahn & Crapo
PO Box 50130
Idaho Falls, ID 83405-0130

For Respondent

Tracey K. Rolfsen
Idaho Department of Labor
317 W. Main Street
Boise, ID 83735

37368

COPY

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

TRACY E. FEARN,)
Claimant/Respondent,)
vs.)
DAVID C. AND MARSHA STEED,)
Employer/Appellant,)
and)
IDAHO DEPARTMENT OF LABOR.)
Respondent.)
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LIST OF EXHIBITS

Hearing Transcript taken on May 28, 2009 will be lodged with the Supreme Court:

Exhibits admitted into record before Idaho Department of Labor

1.	Notice of Telephone Hearing, mailed December 8, 2008	3 pages
2.	Important Information about your Hearing Read Carefully	2 pages
3.	Tracy Fearn's letter of resignation, dated April 1, 2009	1 page
4.	David Steed's letter accepting Fearn's resignation, dated April 6, 2009	1 page
5.	Letters and correspondence to IDOL from David Steed Company, various dates	9 pages
6.	Certified Background Release Form, Employment Verification, and various other documents	4 pages
7.	David Steed Company's letter regarding complaints against the Company, dated 29 April 2009	2 pages
8.	Miscellaneous correspondence	13 pages
9.	Eligibility Determination Unemployment Insurance Claim	2 pages
10.	Request for Appeals Hearing	1 page
11.	David Steed Company's price lists	45 pages
11.	Emails, notes and journal submitted by Tracy Fearn	45pages
12.	Employers Data, dated 5/11/09	1 page

-OR- being discharged and, if so, whether for misconduct in connection with the employment, according to §72-1366(5) of the Idaho Employment Security Law.

FINDINGS OF FACT

Based on the exhibits and testimony in the record, the following facts are found:

1. The claimant worked for this farm equipment re-sale operation from January of 2002 until April of 2009.
2. In the first four of the five calendar quarters preceding the one in which the claimant applied for benefits, this employer paid the claimant more wages than did any other.
3. She quit because of issues she classified as threats, harassment, and discrimination.
4. The threat was that, if the claimant's sales did not improve and return to their levels in relation to other sales staff, her base salary of \$50,000 per year would be cut.
5. The harassment she described involved the owner, David Steed, asking the claimant non related work questions about her social life, personal finance and her church attendance, or lack thereof.
6. The discrimination the claimant asserts involved what she saw as depriving her of sales commissions that she had earned, requiring her to sell equipment at a higher price than other sales staff, and office scheduling issues.
7. The employer acknowledges that "pressure" was being applied to the claimant to increase her sales productivity, including discussion of cutting her base pay.
8. The parties presented directly conflicting testimony as to whether David Steed's questions to the claimant were inappropriate, bombastic and paternalistic or were simply expressions of concern about her well being.
9. In response to the employer's denial of the allegation, the claimant did not describe any specific transaction in which she was denied a commission she was earned, or a particular individual piece of equipment for which she was given a different sales price than was another sales representative.
10. The claimant was apparently obliged to adhere to a tighter schedule of presence in the office than were other sales personnel.
11. The claimant and David Steed had met through church. He had also provided her with assistance in financial matters.

AUTHORITY

Section 72-1351(2)(a) of the Idaho Employment Security Law provides in part that for experience rating purposes, no charge shall be made to the account of such covered employer

with respect to benefits paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer, or who had been discharged for misconduct in connection with such services.

Section 72-1366(5) of the Idaho Employment Security Law provides that a claimant shall be eligible for benefits provided that the claimant's unemployment is not due to the fact that the claimant left employment voluntarily without good cause connected with employment, or was discharged for misconduct in connection with employment.

IDAPA Regulation 09.01.30.450 provides that:

450. QUIT. Ref. Sec. 72-1366(5), Idaho Code. (3-19-99)

01. Burden Of Proof. The claimant has the burden of proof to establish that he voluntarily left his employment with good cause in connection with the employment to be eligible for benefits. (3-19-99)

02. Cause Connected With Employment. To be connected with employment, a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. (3-19-99)

03. Good Cause. The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman. Whether good cause is present depends upon whether a reasonable person would consider the circumstances resulting in the claimant's unemployment to be real, substantial, and compelling. (3-19-99)

04. Moral Or Ethical Quit. A claimant who leaves a job because of a reasonable and serious objection to the work requirements of the employer on moral or ethical grounds and is otherwise eligible, shall not be denied benefits. (3-19-99)

05. Quit Due To Health Or Physical Condition. A claimant whose unemployment is due to his health or physical condition which makes it impossible for him to continue to perform the duties of the job shall be deemed to have quit work with good cause connected with employment. (3-19-99)

06. Quit For Permanent Work Or Quit Part-Time Work For Increase In Work Hours. A claimant who quits a temporary job for a permanent job or who quits part-time employment for employment with an increase in the number of hours of work shall be deemed to have quit work with good cause connected with employment. (3-19-99)

07. Quit Or Retirement During Employer Downsizing. An individual who has continuing suitable work available and who voluntarily elects to retire or to terminate employment during a period of reorganization or downsizing will be considered to have voluntarily quit the employment for personal reasons. (3-19-99)

08. Unrelated Discharge Prior To Pending Resignation. A claimant, discharged before a pending resignation has occurred, for reasons not related to the pending resignation, shall have his eligibility determined on the basis of the discharge, not on the pending resignation. (3-19-99)

09. When Notice Of Resignation Prompts A Discharge. If a claimant had given notice of a pending resignation, but was discharged before the effective date of the resignation, both "separations"

must be considered. The following three (3) elements should be present for both actions to affect the claimant's eligibility: (3-19-99)

- (a) The employee gave notice to the employer of a specific separation date; (3-19-99)
- (b) The employer's decision to discharge the claimant before the effective date of the resignation was a consequence of the pending separation; and (3-19-99)
- (c) The discharge occurred a short time prior to the effective date of the resignation. (3-19-99)

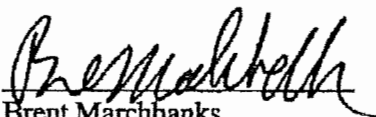
CONCLUSIONS

The preponderance of evidence in the record does not support a conclusion that the claimant was treated differently than other sales staff in terms of commissions earned and pricing of equipment. Nor does raising the potential of a pay cut in the context of the need to improve sales fall outside the scope of generally accepted business practices.

The employer's admittedly non-work related inquiries into the claimant's personal circumstances are troubling. Such matters are not an employer's business. Nevertheless, the personal history the two share makes it unclear as to whether such inquiries were inappropriate meddling and pressure by an employer or an ongoing aspect of a personal relationship.

The claimant has not proven that the terms and conditions of her employment were so substandard that it was reasonable to quit.

The claimant quit without good cause connected with employment. Benefits cannot be granted. The employer's account is not chargeable on the claim.


Brent Marchbanks
Appeals Examiner
Examinador de Apelaciones

Date of Mailing
Fecha De Envío

5/29/09

Last Day To Appeal
Ultimo Día Para Apelar

6/12/09

APPEAL RIGHTS

You have FOURTEEN (14) DAYS FROM THE DATE OF MAILING to file a written appeal with the Idaho Industrial Commission. The appeal must be taken or mailed to:

Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, ID 83720-0041

Or delivered in person to: Idaho Industrial Commission
700 S Clearwater Lane
Boise, Idaho 83712

Or transmitted by facsimile to: (208) 332-7558

If the appeal is mailed, it must be postmarked no later than the last day to appeal. An appeal filed by facsimile transmission must be received by the Commission by 5:00 p.m., Mountain Time, on the last day to appeal. A facsimile transmission received after 5:00 p.m. will be deemed received by the Commission on the next business day. A late appeal will be dismissed. Appeals filed by any means with the Appeals Bureau or a Department of Labor Local Office will not be accepted by the Commission. ***TO EMPLOYERS WHO ARE INCORPORATED:*** *If you file an appeal with the Idaho Industrial Commission, the appeal must be signed by a corporate officer or legal counsel licensed to practice in the State of Idaho and the signature must include the individual's title. The Commission will not consider appeals submitted by employer representatives who are not attorneys. If you request a hearing before the Commission or permission to file a legal brief, you must make these requests through legal counsel licensed to practice in the State of Idaho. Questions should be directed to the Idaho Industrial Commission, Unemployment Appeals, (208) 334-6024.*

If no appeal is filed, this decision will become final and cannot be changed. **TO CLAIMANT:** If this decision is changed, any benefits paid will be subject to repayment. If an appeal is filed, you should continue to report on your claim as long as you are unemployed.

DERECHOS DE APELACIÓN

Usted tiene CATORCE (14) DIAS DESDE LA FECHA DE ENVIO para archivar una apelación escrita con la Comisión Industrial de Idaho. La apelación debe ser llevada o enviada a:

Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, ID 83720-0041

O ser entregada en persona a:

Idaho Industrial Commission
700 S Clearwater Lane

Boise, Idaho 83712

O puede enviarla por fax a: (208) 332-7558.

Si la apelación es enviada por correo, la fecha en el sello del correo debe ser no más tarde de la fecha del último día en que puede apelar. Una apelación tardada será descartada. Apelaciones archivadas con la Agencia de Apelaciones o con la Oficina de Empleo no serán aceptadas por la Comisión. Una apelación archivada por medio de fax debe ser recibida por la comisión no más tarde de las 5:00 P.M. Hora Standard de la Montaña, del último día en que puede apelar. Una transmisión de fax recibida después de las 5:00 P.M. se considerará recibida por la comisión, hasta el próximo día hábil. **EMPLEADORES QUE SON INCORPORADOS:** *Si una apelación es archivada en la Comisión Industrial de Idaho, la apelación tiene que ser firmada por un oficial o representante designado y la firma debe incluir el título del individuo. Si solicita una audiencia ante la Comisión Industrial, o permiso para archivar un escrito legal, ésta solicitud se deberá de hacer por medio de un abogado con licencia para practicar en el estado de Idaho. Preguntas deben ser dirigidas a la Comisión Industrial de Idaho, Unemployment Appeals, (208) 334-6024.*

Si ninguna apelación se archiva, esta decisión será la final y no podrá cambiarse. **AL RECLAMANTE:** Si esta decisión se cambia, todos los beneficios pagados estarán sujetos a reembolso. Si una apelación se archiva, usted debería de continuar reportando en su reclamo mientras esté desempleado.

APPEALS BUREAU
IDAHO DEPARTMENT OF LABOR
317 WEST MAIN STREET / BOISE, IDAHO 83735-0720
(208) 332-3572 / (800) 621-4938
FAX: (208) 334-6440

CERTIFICATE OF SERVICE

I hereby certify that on MAY 29 2009, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

TRACY E FEARN
1545 GARFIELD ST
IDAHO FALLS ID 83401-3033

DAVID C AND MARSHA STEED
DBA DAVID STEED COMPANY
3805 N YELLOWSTONE HWY
IDAHO FALLS ID 83401

cc: Idaho Department of Labor Idaho Falls Local Office





Docket No 4861 yr 2009

Docket Participants Exhibits Issues Calendar Schedule Determinations Appeal Information

Get Docket Info

Clear

Must have both Docket No and Year to edit appeals.

Office 13 Idaho Falls SSN [redacted] Appellant Party

Claimant

File Date 05/06/2009 Process Status Notice of Telephone Hearing

Save

FILED JUL 10 2009 INDUSTRIAL COMMISSION

Summary Info Only(can not edit below):

4861-2009 TRACY E FEARN DAVID C AND MARSHA STEED 13 05/06/2009

Issues:

Hearing Schedule:

010-010 - Voluntary Quit; 021-Chargeability; May 28 2009 10:00 AM Brent Marchbanks [redacted] Appellant: Claimant Updated: 05/11/2009 By: egloeckl

Tracy E. Fearn / David C. And Marsha Steed

Notes:

2009-06-09 13:27:07-(ts) - Rec'd IC protest; processed as needed.; 2009-05-27 14:47:40-(tc) - recvd fax frm clmnt to get records frm emplyr, gave to hearing examiner;

8

IDAHO

DEPARTMENT OF LABOR

1515 E. Lincoln Road
Idaho Falls, ID 83401-2129
Phone: (208) 557-2500
Fax: (208) 525-7041

FILED
JUN - 4 2009
INDUSTRIAL COMMISSION

Fax

To: Appeals Bureau From: Tracy Fearn
Fax: 208-332-7558 Date: 6-4-09
Pages: 2

Idaho Department of Labor customers are permitted to use this fax in connection with employment related activities. If you receive a fax that is not employment related or is otherwise inappropriate, please contact the Manager Wade Virgin at 557-2500.

Comments:

Thanks,
Tracy

June 4, 2009

Appeals Bureau
Idaho Department of Labor
317 W Main St
Boise, ID 83735

To Whom It May Concern:

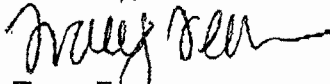
I would like to appeal the latest decision to deny my unemployment benefits.

I feel strongly about the reasons I felt forced to quit my job. I am quite certain if you would take the time to get personal testimony from Dick Rubottom who was employed there at the same time as myself from 2002 through October 2008 and also from Theresa Tabor who was also employed there at the same time as I was, and after Dick was gone, until April of 2009. They will attest to the daily harassment (badgering and questioning) of my personal life and issues that they witnessed themselves. I have supplied their phone numbers previously and they also gave short written statements.

There is a current employee that also made a complaint on my behalf (unknown to me at the time) regarding the harassment she felt was taking place towards me from the owner. It would be worthwhile having a discussion with her.

I will wait to hear back from you. My mailing address is PO Box 3569, Idaho Falls, ID 83403 and my phone number is 208-206-0734.

Sincerely,


Tracy Fearn

FILED

JUN - 4 2009

INDUSTRIAL COMMISSION

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,)
SSN: [REDACTED])
)
Claimant,)
)
vs.)
)
DAVID C. AND MARSHA STEED,)
)
Employer,)
)
and)
)
IDAHO DEPARTMENT OF LABOR.)
_____)

IDOL # 4861-2009

NOTICE OF FILING OF APPEAL

FILED

JUN 10 2009

INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE: The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed. Documents that are already part of the record or file will not be copied.

Further action will be taken by the Industrial Commission in accordance with its Rules of Appellate Practice and Procedure, a copy of which is enclosed.

PLEASE READ ALL THE RULES CAREFULLY

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor. To request a briefing schedule or hearing, refer to Rule 5(A) and 7(A,B) of the Rules of Appellate Practice and Procedure.

INDUSTRIAL COMMISSION
UNEMPLOYMENT APPEALS DIVISION
POST OFFICE BOX 83720
BOISE IDAHO 83720-0041
(208) 334-6024

CERTIFICATE OF SERVICE

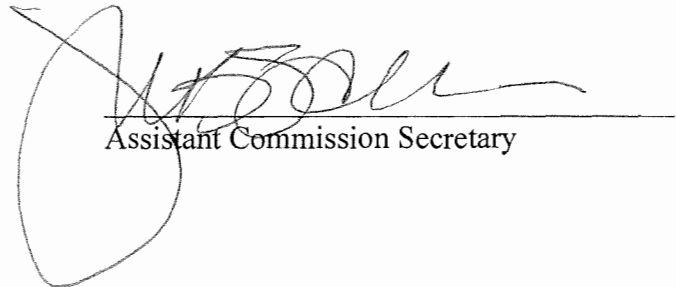
I hereby certify that on the 10TH day of June, 2009, a true and correct copy of the **Notice of Filing of Appeal (and compact disc of the Hearing to follow)** was served by regular United States mail upon the following:

TRACY E. FEARN
1545 GARFIELD ST
IDAHO FALLS ID 83401-3033

DAVID C AND MARSH STEED
DBA DAVID STEED COMPANY
3805 N YELLOSTONE HWY
IDAHO FALLS ID 83401

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

mcs



Assistant Commission Secretary

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431
KATHERINE TAKASUGI – ISB# 5208
TRACEY K. ROLFSEN – ISB# 4050
CHERYL GEORGE – ISB# 4213
Deputy Attorneys General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735
Telephone: (208) 332-3570 ext. 3184

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,)
)
 Claimant,)
)
vs.)
)
DAVID STEED COMPANY,)
)
 Employer,)
)
and)
)
STATE OF IDAHO,)
DEPARTMENT OF LABOR.)
_____)

IDOL NO. 4861-2009


NOTICE OF APPEARANCE

FILED
JUN 18 2009
INDUSTRIAL COMMISSION

TO THE ABOVE-NAMED PARTIES:

Please be advised that the undersigned Deputy Attorney General representing the Idaho Department of Labor hereby enters the appearance of said attorneys as the attorneys of record for the State of Idaho, Department of Labor, in the above-entitled proceeding. By statute, the Department of Labor is a party to all unemployment insurance appeals in Idaho.

DATED this 16TH day of June, 2009.



Tracey K. Rolfsen
Deputy Attorney General
Attorney for the State of Idaho,
Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE,
was mailed, postage prepaid, this 16TH day of June, 2009, to:

TRACY E FEARN
1545 GARFIELD ST
IDAHO FALLS ID 83401-3033

DAVID STEED COMPANY
3805 N YELLOWSTONE HWY
IDAHO FALLS ID 83401



Vicki Maxwell

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,)
)
 Claimant,)
)
 vs.)
)
 DAVID C. AND MARSHA STEED,)
)
 Employer,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
 _____)

IDOL # 4861-2009

FILED
JUL 13 2009
INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE


I hereby certify that on the 13th day of July, 2009 a true and correct copy of the **compact disc of the Hearing held on May 28, 2009**, was served by regular United States mail upon the following:

TRACY E. FEARN
1545 GARFIELD ST
IDAHO FALLS ID 83401-3033

DAVID C AND MARSH STEED
DBA DAVID STEED COMPANY
3805 N YELLOSTONE HWY
IDAHO FALLS ID 83401

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

mcs



Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,

Claimant,

vs.

DAVID C. AND MARSHA STEED,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL #4861-2009

DECISION AND ORDER

FILED

AUG 31 2009

INDUSTRIAL COMMISSION

Appeal of a Decision issued by an Appeals Examiner with the Idaho Department of Labor ruling Claimant ineligible for unemployment benefits. REVERSED.

Claimant, Tracy E. Fearn, appeals to the Industrial Commission a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”) ruling her ineligible for unemployment insurance benefits. The Department’s Appeals Examiner concluded that (1) Claimant voluntarily left employment without good cause connected with employment, and (2) Employer’s account is not chargeable for experience rating purposes. With her request for appeal, Claimant requested to call additional witnesses to provide testimony for consideration on appeal. We treat such correspondence as a request for a new hearing and address this matter below.

The undersigned Commissioners have conducted a *de novo* review of the record as provided for in Idaho Code § 72-1368(7) and opinions issued by the Idaho Supreme Court. The Commission has relied on the audio recording of the hearing the Appeals Examiner held on May 28, 2009, along with the exhibits [1 through 13] admitted into the record during that proceeding.

DECISION AND ORDER - 1

NEW HEARING

Idaho Code § 72-1368(7) gives the Commission authority to “in its sole discretion, conduct a hearing to receive additional evidence or [...] remand the matter back to the appeals examiner for an additional hearing and decision.” In this case, Claimant seeks consideration on appeal of additional testimony from three witnesses. (Claimant’s request for appeal, filed June 4, 2009).

Rule 7(B)5 of the Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law, effective as amended March 1, 2009, provides that a party requesting a hearing to offer additional evidence shall submit the “reason why the proposed evidence was not presented before the examiner.” Whether a party seeks to present additional evidence or make an oral argument based on the record as it stands, that party must present some justification for that request. Unemployment insurance appeals are adjudicated under the principles and procedures of administrative law. Hearings at this level of review are not a matter of right, as in some other forums.

Even though Claimant participated in the Appeals Examiner’s Hearing, she now seeks consideration on appeal of written testimony from herself and another witness. Prior to the hearing, Claimant was informed that she had an opportunity to investigate the issues related to her discharge and that she would only be permitted to provide additional testimony after the hearing in rare circumstances. (Exhibit 2).

In addition, Claimant was notified in the documents accompanying the hearing notice of the procedures for submitting evidence to be admitted into the hearing record and for requesting that the Appeals Examiner reopen the hearing. The information document clearly stated under the heading “EVIDENCE” the instructions for admitting evidence into the hearing record and under “REOPENING THE HEARING” that Claimant had 10 days to file a request in writing with the Appeals Bureau if she had witnesses who were unable to appear at the hearing or had evidence that was not available at the time of the hearing. (Exhibit 2). Although Claimant

provided the telephone numbers for two of the witnesses she now seeks leave to call, she did not notify them of the time for her hearing so they were unavailable when the Appeals Examiner telephoned them. (Audio recording). Although neither witness came to the telephone, the Appeals Examiner indicated on the record that he had left messages with each, providing instructions for calling in and joining the hearing. (Audio recording). Nevertheless, neither witness called before the hearing was concluded. (Audio recording). Further, there is no evidence in the record to suggest that Claimant took any steps to utilize the established procedures to admit evidence at the hearing concerning the third witness she seeks to call or to request that the hearing be reopened.

The Idaho Supreme Court has consistently held that the Commission's determination of whether to consider additional evidence is within the Commission's sole discretion. Further, those decisions will not be overturned absent a showing of an abuse of that discretion. Appeals Examiner of Idaho Department of Labor v. J.R. Simplot Co., 131 Idaho 318, 955 P.2d 1097 (1998). The Commission takes the position that conducting a new hearing at this level of review is an extraordinary measure and should be reserved for those cases when due process or other interests of justice demand no less. We have carefully reviewed the record and can find no evidence that Claimant was deprived of due process. Consequently, Claimant's request for a new hearing is DENIED. Further, we will consider only that evidence in the record as established by the Appeals Examiner.

FINDINGS OF FACT

Based on the testimony and the evidence, the Commission concurs with and adopts the Findings of Fact as set forth in the Appeals Examiner's Decision.

DISCUSSION

Claimant worked for Employer from January 2002 until April 2009, most recently as a heavy machinery salesperson. (Audio recording). Claimant quit her job because David Steed,

owner, had threatened to reduce her base pay if she did not improve her sales; had continually asked and lectured Claimant about her finances, personal life, and church attendance; and had allowed her fewer freedoms in the office than he allowed Claimant's male counterparts. (Audio recording; Exhibit 11).

Because there is no dispute among the parties that Claimant quit, the only issue before us is whether Claimant had good cause for quitting that job. Idaho Code § 72-1366(5) provides in part that a claimant is eligible for unemployment insurance benefits if he or she quits for good cause related to employment. If an employee voluntarily quits his or her job, that employee bears the burden of proving that the terms and conditions of that employment provided him or her with good cause to quit. Moore v. Melaleuca, Inc., 137 Idaho 23, 43 P.3d 782 (2002).

The Idaho Supreme Court and the Idaho Administrative Code both define what constitutes "good cause" for quitting employment for the purpose of establishing eligibility for unemployment benefits. IDAPA 09.01.30.450.03 provides that good cause is established when the claimant demonstrates that his or her real, substantial, and compelling circumstances would have forced a "reasonable person" to quit. Stated another way, "good cause" exists when the essential conditions of the workplace environment are so extraordinary that an average person standing in the claimant's place would prefer joblessness to continuing the employment relationship. See Ewins v. Allied Security, 138 Idaho 343, 347-48, 63 P3d 469, 473-74 (2004); Burroughs v. Employment Sec. Agency, 86 Idaho 412, 414, 387 P.2d 473, 474 (1963). Purely personal reasons are not "good cause" for quitting a job.

In addition, the good cause must be related to the employment. To be connected with employment, IDAPA 09.01.30.450.02 provides that a claimant's reason(s) for leaving the employment must arise from the working conditions, job tasks, or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non-job-related matters, the

reasons are not connected with the claimant's employment. The employee must explore all viable options before making the decision to quit. *Moore*, 137 Idaho at 28, 43 P.3d at 787.

Claimant testified that she quit because of threats, harassment, and discrimination in the workplace by David Steed, owner of Employer. (Audio recording). Her testimony and her journal, kept as the events unfolded, indicate that Mr. Steed threatened to fire her or lower her base pay if she did not increase her sales as late as April 2009; that Mr. Steed required her to remain at the office during lunch unless there was another salesperson there, whereas the male salespeople could go to lunch regardless of coverage; and that Mr. Steed continually inquired into and lectured Claimant about her personal life, as illustrated by the following summarized examples:

1. In March 2006, Mr. Steed told her she needed to be harder on her son and send him to a camp to make him learn to work;
2. In April 2006, Mr. Steed told her she needed a man to take care of her and to look into match.com or ldssingles.com;
3. In November 2006, Mr. Steed told her she needed to find a man to do things with and asked if she ever thought of being a lesbian;
4. In February 2007, Mr. Steed told her he was concerned about her temperament during slow months because "as a woman" her emotions get more strung out than a man's;
5. In April 2008, Mr. Steed told her that she would not last in a medical profession because she needs counseling for her attitude, that the way she reacts to stress is not right or good or normal, and that no one is going to treat her as well as he will because he cares about her and is only trying to make her the best person she can be;
6. In May 2008, Mr. Steed inquired as to why she had not been at church, then became angry when she told him that that was a personal matter and not related to work;
7. In August 2008, Mr. Steed told her she should be "man enough" to admit mistakes and that she could not ask questions, make comments, etc., about issues he would raise and berated her about her attitude when she questioned him about this requirement;

8. In October 2008, Mr. Steed told her she would be let go if she could not “put a smile on her face”;
9. In October 2008, Mr. Steed inquired as to her doctor’s appointment, to which she responded that it was none of his business;
10. In October 2008, Mr. Steed inquired as to whether a man who Mr. Steed had encouraged to “court” her had called and lectured her on being respectful to him (Mr. Steed) after she told him to stay out of her business;
11. In January 2009, Mr. Steed inquired as to her personal motivations, finances, etc., prior to signing a sheet (verifying employment) necessary for a nursing school loan application; and
12. In March 2009, Mr. Steed lectured her regarding her upcoming marriage and how difficult it would be and how it might not work because she was so stubborn.

(Exhibit 11).

Also in March 2009, Claimant’s evidence indicates she was told she might not get time off for her honeymoon from April 17 through April 23, 2009 (4 days off total). (Exhibit 11, p. 42). Jamie Garvin, former secretary for Employer during Claimant’s employment, testified that Claimant was required to remain in the office more than other salespeople, was generally treated differently, and that she heard Mr. Steed asking Claimant about personal matters. (Audio recording).

In addition, Claimant’s journal details how Mr. Steed and his son, Alexander Steed (who was Claimant’s general manager), increasingly micromanaged Claimant, to the point where she was required to show them all of her e-mails and go over every sale with them. (Exhibit 11). Claimant also believed that she was not getting credit for all of her sales and that the other salespeople were allowed to sell items at lower prices than she could sell them for. (Audio recording; Exhibit 11). The beginning of this period coincided with the replacement of Claimant’s former manager with Alexander Steed. (Exhibit 11).

On April 1, 2009, Claimant turned in her written resignation indicating that her last day would be April 8. (Exhibit 3, p. 1). Before her last day, Claimant sent out an email to 7,500 of Employer's business contacts indicating that they could reach her on her cell phone after April 8. (Audio recording; Exhibit 5, p. 8). David Steed testified that he dismissed Claimant early, paying her through April 6, because he felt Claimant was being disloyal in sending those emails. (Audio recording; Exhibit 5, pp. 5-6).

Mr. Steed also testified that although Claimant was a talented salesperson, she had a bad attitude and was distracted toward the end of her employment. (Audio recording; Exhibit 5, p. 5). Mr. Steed admitted that he had threatened to reduce Claimant's base pay if she did not increase her sales and also that he inquired into Claimant's well-being and whether she had been at church on occasion, because he was personally concerned about her. (Audio recording). Mr. Steed further testified that he had hired Claimant, a single mother at the time, on a referral from his church (which Claimant also attended) and had sometimes "tried to do things for Miss Fearn that she didn't solicit." (Audio recording). For example, Mr. Steed testified, and Alexander Steed confirmed, that in approximately 2002, Mr. Steed assisted Claimant in negotiating with her bank and providing her an interest-free car loan. (Audio recording; Exhibit 7). In addition, the parties agree, Mr. Steed bought Claimant a freezer as a "bonus". (Audio recording).

Mr. Steed, Paula Olsen, Employer's accountant, and Alexander Steed also testified that Claimant was never denied credit for a sale and had always been treated fairly. (Audio recording; Exhibit 5, pp. 1-3, 5-6). Mr. Steed testified that Claimant actually had a better arrangement than the other salespeople because she only had to sell \$175,000 to be eligible for a commission, whereas the others had higher thresholds. (Audio recording). In his closing, Mr. Steed surmised that the job of selling was taxing on Claimant's emotional makeup. (Audio recording).

After a careful review of the record, we find insufficient evidence that Mr. Steed's warnings in connection with Claimant's sales performance, or his treatment of Claimant with respect to crediting her sales or pricing products sold by her, constitute good cause for Claimant to voluntarily quit. Claimant did not dispute that her sales had declined, and although she attributed this decline to Mr. Steed's behavior towards her, it was nevertheless within Mr. Steed's authority to warn Claimant of the potential consequences. Further, Claimant's allegations that her sales were not all appropriately credited to her were refuted by all three of Employer's witnesses and her allegation that she was required to sell products at higher prices than some employees was refuted by Mr. Steed. We allocate equal weight to the testimony of each party; as a result, Claimant has failed to prove these allegations by a preponderance of the evidence.

As the Appeals Examiner pointed out, Mr. Steed's regular and repeated inquiries into the most delicate aspects of Claimant's personal life, even after she told him it was none of his business, while she was at work, present a more difficult question. So do the paternalistic and sexist tones of many comments and inquiries Claimant attributes to Mr. Steed.

The claimant in Moore v. Melaleuca, Inc., 137 Idaho 23, 43 P.3d 782 (2002), was subjected to sexist treatment by her supervisor. Moore's supervisor told her, when he learned she was pregnant, that she should quit and stay home with the child and, if she were his wife, he would insist that she do so. Then, two weeks prior to her maternity leave, the chief of operations, who had no first-hand knowledge of her performance, told her he was unhappy with her performance on the job and that there were people waiting in line to replace her. After the child was born and Moore returned to work, she was required to report to a new employee/supervisor, with less experience than she had, and had received a lower than expected raise. The Idaho Industrial Commission found Moore had been discriminated against based upon her decision not to stay

home with her baby. Based on these facts, the Idaho Supreme Court affirmed the Idaho Industrial Commission's determination that Moore had "good cause" to leave her employment.

Like the employer's actions in *Moore*, Mr. Steed's sex- and religion-based comments and lectures, in connection with his inappropriate questioning into Claimant's personal life while she was at work, were offensive to Claimant, and she told him so. Nevertheless, he persisted. In addition, Claimant was not allowed to come and go at the office as the male salespeople were allowed to do. We find that such behavior would offend a reasonably prudent employee and that it created a hostile working environment for Claimant. While Claimant did not always endure Mr. Steed's opinions quietly and did not always present with a demeanor favored by Mr. Steed, these are not defenses to Mr. Steed's harassing treatment of Claimant. Moreover, although Claimant did not establish that Employer compensated her unfairly, this is not a requirement to find a hostile work environment.

We also find that Claimant exhausted all viable options by telling Mr. Steed repeatedly that her personal life was none of his business. As the owner of the company, Mr. Steed held ultimate authority over the matter, and Claimant's admonitions to him were futile. There was nothing more she could do.

Idaho unemployment insurance benefits are reserved for limited circumstances that are well-defined by the Idaho unemployment insurance law. That law, summarized in relevant part above, requires that a Claimant who voluntarily quits her job must have good cause connected with employment. We find Mr. Steed's sexist comments to Claimant and his repeated inquiries into her religious practices and personal life, without her consent, gave Claimant good cause to quit. We further find that Claimant explored all viable options before deciding to quit, as is required under the Idaho Employment Security Law.

As a result, we find that Claimant met her burden of proving that she had good cause to quit her job with Employer. Claimant is eligible for unemployment benefits.

In this case, Employer paid the most wages to Claimant during the last four base quarters. (Exhibit 5). Idaho Code §72-1351(2)(a) provides that an employer's experience rated account is chargeable for benefits paid to a claimant whose separation from employment resulted from discharge for reasons other than misconduct or a voluntary separation for good cause. Because we conclude that Claimant had good cause for quitting her job with Employer, we find that Employer's account is chargeable for experience rating purposes.

CONCLUSIONS OF LAW

I

We conclude that Claimant had good cause related to her employment for quitting her job with Employer.

II


We further conclude that Employer's account is chargeable for experience rating purposes.

ORDER


Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED and Claimant is eligible for unemployment insurance benefits. This is a final order under Idaho Code § 72-1368(7).

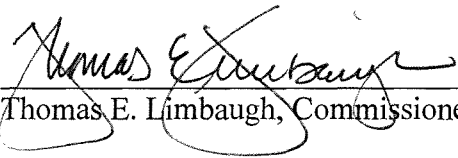
DATED this 31 day of August, 2009.

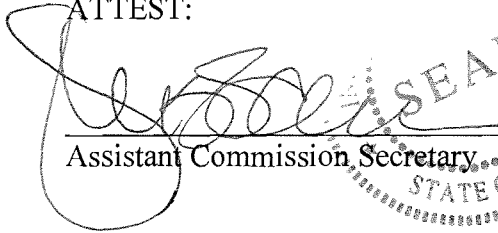
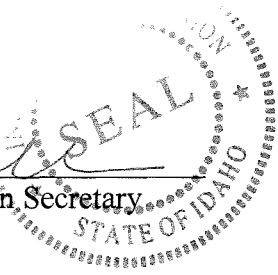
INDUSTRIAL COMMISSION



R.D. Maynard, Chairman


Thomas P. Baskin, Commissioner


Thomas E. Limbaugh, Commissioner

ATTEST:

Assistant Commission Secretary


CERTIFICATE OF SERVICE

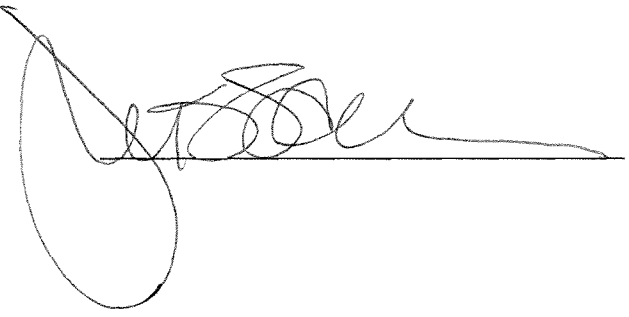
I hereby certify that on the 31 day of August, 2009, a true and correct copy of the foregoing **DECISION AND ORDER** was served by regular United States mail upon each of the following:

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BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,

Claimant,

v.

DAVID C. AND MARSHA STEED,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 4861-2009

MOTION FOR RECONSIDERATION

COMES NOW Employer David C. Steed and Marsha Steed ("Steed") and submits to the Industrial Commission of the State of Idaho this Motion for Reconsideration of the Decision and Order of the Industrial Commission filed August 31, 2009.

I. INTRODUCTION

On or about April 1, 2009, Claimant Tracy E. Fearn ("Fearn") resigned her employment with Steed, designating her last day of employment to be April 8, 2009. On

April 6, 2009, Steed fired Fearn for sending emails to 7,500 clients, giving them her personal contact information. Subsequently, Fearn applied for unemployment benefits. Fearn was denied, and appealed the denial of benefits. On May 28, 2009, Fearn's appeal was heard by Brent Marchbanks, Appeals Examiner of the Idaho Department of Labor. Evidence related to Fearn's eligibility for unemployment benefits was presented at the hearing by both Fearn and Steed. On May 29, 2009, the Appeals Examiner issued his opinion regarding Fearn's eligibility for unemployment benefits and affirmed the previous determination denying her benefits. In his decision, he also noted several findings of fact.

Fearn appealed the decision of the Appeals Examiner to the Industrial Commission. Included in Fearn's appeal was a request for a new hearing which was ultimately denied. However, based upon the findings of fact as set forth in the Appeals Examiner's decision, as well as the evidence in the record as established by the Appeals Examiner, the Industrial Commission found "insufficient evidence that Mr. Steed's warnings in connection with Claimant's sales performance, or his treatment of Claimant with respect to crediting her sales or pricing products sold by her, constitute good cause for Claimant to voluntarily quit." The Industrial Commission further found that "Mr. Steed's sexist comments to Claimant and his repeated inquiries into her religious practices and personal life, without her consent, gave Claimant good cause to quit. We further find that claimant explored all viable options before deciding to quit..." (Decision and Order, p. 8, 9).

Steed now submits this Motion for Reconsideration pursuant to Rule 8 of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law. Steed requests that the Industrial Commission reconsider its conclusions in the Decision and Order because (1) the evidence in the record reflects that Fearn was discharged for misconduct prior to her pending resignation, and as such, Fearn's unemployment benefits eligibility should have been decided on the basis of her discharge for misconduct and not on her pending resignation, and (2) Fearn did not meet her burden of proof to establish that she voluntarily left her employment with good cause in connection with her employment.

II. ARGUMENT

A. **The Industrial Commission Erred by Failing to Consider Misconduct that Occurred During the Pending Resignation**

Even if Fearn were eligible for unemployment compensation because she had good cause to leave her employment, her actions in sending e-mails to clients prior to her end of employment was misconduct that eliminated her eligibility. While the Industrial Commission's legal conclusions may be freely reviewed (*Moore v. Melaleuca*, 137 Idaho 23, 26, 43 P.3d 782, 785 (2002)), its findings of fact must be supported by substantial and competent evidence (*Dennis v. School District No. 91*, 135 Idaho 94, 15 P.3d 329, 331-32 (2000)). Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000).

Pursuant to the Idaho Administrative Code, any discharge that occurs prior to the date of resignation must be considered for eligibility. Section 09.01.30.450.08 states as follows:

08. Unrelated Discharge Prior to Pending Resignation. A claimant, discharged before a pending resignation has occurred, for reasons not related to the pending resignation, shall have his eligibility determined on the basis of the discharge, not on the pending resignation.

IDAPA 09.01.30.450.08.

Claimant gave her written resignation on April 1, 2009, indicating her last day would be April 8, 2009. (Exhibit 3). On April 6, 2009, Steed fired Fearn for sending out e-mails to approximately 7,500 clients regarding her end of employment and providing her cell phone for them to contact her. (Audio Recording; Exhibit 5, p. 8). David Steed testified that Fearn was fired for this action because it was unethical for Fearn to solicit Steed's clients and it was disloyal to the business. (Audio Recording; Decision and Order, p. 7). Fearn admitted to the Appeals Examiner that she intended to tell Steed's clients she was threatened, harassed, and discriminated against, confirming Steed's concerns about her loyalty. (Audio Recording). Fearn admitted in her "journal" that she was directed "not to send any e mails with out them checking them first" on March 25, 2009. (Exhibit 11, p. 42). In spite of this specific directive, Fearn sent two e-mail to approximately 7,500 clients, telling them she was leaving and providing her personal cell phone number. (Audio Recording; Exhibit 5, p. 4). The Appeals Examiner directed several questions on this issue to Fearn during the hearing, but misconduct was not analyzed.

Fearn's action to cause damage to Steed prior to her end of employment prohibits her receipt of unemployment compensation benefits. To demonstrate misconduct, "there must be a deliberate and intentional violation of the spirit of the rule. Misconduct is defined as (1) a willful, intentional disregard of the employer's interest; (2) a deliberate violation of the employer's rules; or (3) a disregard of standards of behavior which the employer has a right to expect of its employees." See *Chapman v. NYK Line North America, Inc.*, 147 Idaho 178, ___, 207 P.3d 154, 158 (2009) (internal citations omitted).

In Fearn's case, her misconduct meets every definition of misconduct. First, she wilfully and intentionally disregarded Steed's interest in protecting its clients. Steed testified he was upset that Fearn had sent her personal cell phone to clients so they could contact her because he believed Fearn was being disloyal and unethical. (Audio Hearing). Steed's decision to fire Fearn for misconduct was substantiated in the Hearing. Fearn admitted she sent Steed's clients her telephone number so they could contact her directly because a number of them were calling to find out why she was leaving. More disturbing, she admitted she intended to tell them she had been harassed and discriminated against as follows:

Fearn: There was an original e-mail sent out saying I would no longer be with the company. There was a second e-mail that had my cell phone that said they could contact me on that if they wanted to. And the reason I sent that was because I, between sending that first e-mail saying I would no longer be with the company, I had ten or fifteen phone calls from my customers wanting to know what I was doing, why I was leaving and what's going on. And I told them I didn't feel politically correct discussing the matter with them until I was no longer with the business and that was the intent and why I sent the e-mail with the cell phone — saying call me

Marchbanks: What would you be willing to tell them after April 8 that you were not willing to tell them before April 8?

Fearn: That I was being harassed and discriminated against and . . .

Marchbanks: I can see why the employer might think that's unethical, don't you?

(Audio Hearing). Regardless of whether Fearn had "good cause" to end her employment, she certainly could not seek to harm Steed by destroying its relationship with its clients.

Second, as trust issues arose between Steed and Fearn, she was specifically directed not to send out any e-mails without them being reviewed first. (Exhibit 11, p. 42). Consequently, Fearn intentionally disregarded Steed's reasonable rule regarding her email use which, by her own admission, had been communicated to her. Fearn knew she was not permitted to send out the e-mails to clients and was looking to do nothing further than damage Steed's business.

Finally, Steed had a reasonable expectation that its employee would not seek to interfere with and destroy its relationship with its clients. "For misconduct in standard-of-behavior cases, this Court applies a two-prong test: (1) whether claimant's conduct fell below the standard of behavior expected by the employer; and (2) whether the employer's expectations were objectively reasonable in the particular case." *Welch v. Cowles Publ'g Co.*, 127 Idaho 361, 364, 900 P.2d 1372, 1375 (1995). Analyzing the second prong, an "employer's expectations are ordinarily reasonable only where they have been communicated to the employee." *Desilet v. Glass Doctor*, 142 Idaho 655, 132 P.3d 412 (2006). As stated previously, Fearn had specifically been directed to have her outgoing e-mails reviewed. Consequently, regardless of whether those actions might be construed as micro-managing, Fearn knew she was violating Steed's expected standard of conduct by sending e-mails to Steed's clients. Whether Fearn's intentions were to solicit clients or interfere with Steed's client

relationships, it matters little. Her contact with clients for her admitted purpose to inform them she had been harassed and discriminated against violated Steed's expected standards of conduct and amounts to misconduct. Fearn is not entitled to unemployment compensation benefits.

B. Claimant Failed to Demonstrate by Substantial and Competent Evidence that She had Good Cause to Quit Her Employment

Fearn failed to carry her burden and establish she had good cause to quit. The Industrial Commission erred in finding good cause because it focused on events that occurred months and years before Fearn's end of employment and failed to consider the severity or pervasiveness of Mr. Steed's alleged harassment on Fearn's ability to perform her job. A finding by the Industrial Commission that an employee has shown "good cause" to quit is a factual determination, and must be supported by substantial and competent evidence. *See Ewins v. Allied Security*, 138 Idaho 343, 347, 63 P.3d 469, 473 (2003). Substantial evidence is more than a scintilla of proof, but less than a preponderance. *Zapata v. J.R. Simplot*, 132 Idaho 513, 515, 975 P.2d 1178, 1180 (1999) (citing *Boley v. State*, 130 Idaho 278, 280, 939 P.2d 854, 856 (1997)). It is relevant evidence that a reasonable person might accept to support a conclusion. *Id.* In the case at hand, the Industrial Commission determined that claimant had good cause to quit, despite Fearn's failure to meet her burden of proof regarding good cause based upon the evidence in the record.

Pursuant to Idaho Code § 72-1366(5), in order to obtain unemployment benefits, the claimant's unemployment cannot be the result of her leaving employment voluntarily without good cause connected with her employment. It is the claimant's burden to establish that she voluntarily left her employment with good cause in connection with the employment. IDAPA 09.01.30.450.01. The claimant's reasons for leaving the employment must arise from working conditions, job tasks,

or employment agreement. If the claimant's reason(s) for leaving the employment arise from personal/non job-related matters, the reasons are not connected with the claimant's employment. See IDAPA 09.01.30.450.02. "In order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial, not trifling, reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances. The standard of what constitutes good cause is the standard of reasonableness as applied to the average man or women." *Ewins*, 138 Idaho at 347-48, 63 P.3d at 473-74; see also IDAPA 09.01.30.03. Good cause "must not be extended to include purely personal and (subjective) reasons which are unique to the employee - it must require that such cause is not a condition which by common knowledge is usual where accompanied by minor irritations." *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 758, 589 P.2d 89, 93 (1979) (citing *Boodry v. Eddy Bakeries, Inc.*, 88 Idaho 165, 397 P.2d 256 (1964)). Finally, good cause requires that the employee explore all viable employment options before making the decision to quit. *Ewins*, 138 Idaho 348, 63 P.3d 474.

In its Decision and Order, the Industrial Commission ultimately concludes, "[a]fter a careful review of the record, we find insufficient evidence that Mr. Steed's warnings in connection with Claimant's sales performance, or his treatment of Claimant with respect to crediting her sales or pricing products sold by her, constitute good cause for Claimant to voluntarily quit." (Decision and Order, p. 8). The Decision and Order also concludes that "Mr. Steed's sexist comments to Claimant and his repeated inquiries into her religious practices and personal life, without her consent, gave Claimant good cause to quit" and created a "hostile working environment." (Decision and Order, p. 9). The Decision and Order also found that Claimant explored all viable options before deciding to quit...." (Decision and Order, p. 9). The Industrial Commission's conclusion that Fearn had good

cause to quit based upon Mr. Steed's inquiries into her personal life, religious practices, and allegedly sexist comments, which allegedly created a hostile work environment is not supported by substantial and competent evidence.

1. Fearn's Admitted Reasons for Quitting were Unrelated to Mr. Steed's Alleged Comments and Inquiries

In her resignation letter, Fearn indicates that the occurrences at work which drove her toward resignation were related to her employer's failure to recognize her "skills and experience as a salesperson" and occurred in the last six months of her employment. The body of her letter, in its entirety, reads as follows:

To whom it may concern,

I have been employed at David Steed Company for the past 7 years. During that time we have had our differences. For the past six months I feel that my skills and experiences as a sales person are continually overlooked and undermined. I have done the things that have been asked of me on a daily basis and I feel I have gone over and above those duties and yet I am continually treated as if I don't know how to do my job.

I feel I have no alternative but to hand in my resignation. Please consider this my 5 day notice in writing; my last day will be Wednesday April 8th, 2009.

Sincerely,
Tracy Fearn

(Exhibit 3). There is no mention in the resignation letter of Steed's inquiries into Fearn's personal life or the alleged paternalistic and sexist tones of many comments and inquiries Claimant attributed to Steed. (Exhibit 3). Additionally, a review of the course of events of the six¹ months prior to Fearn's resignation documented in Exhibit 11 shows that Fearn's issues with her employer centered

¹A measure of six months prior to her end of employment is used because of Fearn's own admission in her resignation letter that the problem causing her resignation began six months prior to her resignation letter. (See Exhibit 11).

around her sales performance and her treatment as a salesperson. Aside from a conversation on March 30, 2009, there is no mention of any comments from Mr. Steed or Alexander Steed related to Fearn's personal life, religious practices, or comments of a sexist or paternalistic nature for six months prior to her decision to quit.

The resignation letter and the contents of Fearn's journal during the six or more months prior to her resignation clearly indicate that the impetus for her resignation was Mr. Steed and Alexander Steed's treatment of her as related to her sales performance and not to any comments or inquiries made into her personal or religious life, or any allegedly sexist or paternalistic comments. As mentioned above, the Industrial Commission ultimately determined that Fearn did not show good cause for voluntarily terminating her employment with regard to her treatment related to her sales performance. Because Fearn's reason for resignation stemmed from treatment by her employer as related to her sales performance, and because she did not show good cause on that issue, and because Fearn's reason for resignation did not stem from Mr. Steed's comments regarding her personal life, religious life, or allegedly sexist or paternalistic comments, the Industrial Commission should reverse its finding that Fearn showed good cause for her voluntary resignation.

2. Mr. Steed's Alleged Sexist, Religious and Paternalistic Comments to do not Rise to the Level of a Hostile Working Environment

Additionally, the Industrial Commission's finding that Fearn showed good cause as related to "Mr. Steed's sexist comments to Claimant and his repeated inquiries into her religious practices and personal life, without her consent" should be overturned because Mr. Steed's comments on Fearn's personal life during the relevant time period were clearly mere annoyances to Fearn, and certainly did not rise to the level of a hostile working environment, i.e., good cause. Assuming Mr.

Steed's inquiries occurred, however well meant, the Decision and Order fails in any way to justify how these comments, most of which occurred months or years before her resignation, were sufficiently severe or pervasive to alter the conditions of Fearn's employment. Although denied by Mr. Steed, even assuming Fearn's "journal" entries accurately documented Fearn's encounters with Mr. Steed, Mr. Steed's actions failed to be sufficient or pervasive to drive someone from their employment. In fact, Fearn failed to even mention the alleged "hostile work environment" in her resignation letter. In addition, her "journal" entries for the last year of her employment, primarily dispute the pressure that was being placed on her to improve her performance. Her decision to quit has nothing to do with alleged sexist or religious comments. (Exhibit 11).

According to the Idaho Supreme Court, a hostile working environment claim requires the following prima facie case: "(1) that the plaintiff was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, (2) that this conduct was unwelcome, and (3) that the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *De Los Santos v. J.R. Simplot Co., Inc.*, 126 Idaho 963, 967, 895 P.2d 564, 568 (1995). This standard is closely repeated by the relevant Idaho Administrative Code for sexual harassment supporting good cause to quit:

625. SEXUAL HARASSMENT.

For purposes of Section 72-1366(5), Idaho Code, when a party asserts that sexual harassment was a reason for a claimant's separation from employment, "sexual harassment" is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (3-19-99)

01. Condition of Employment. Submission to such conduct was made either explicitly or implicitly a term or condition of an individual's employment. (3-19-99)

02. Employment Decisions. Submission to or rejection of such conduct by an individual was used as the basis for employment decisions affecting such individual. (3-19-99)

03. Interference with Performance/Work Environment. Such conduct had the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. (3-19-99)

Whether the harassment be based on sex or religion, the Idaho Supreme Court and the regulations make clear that the alleged harassment must be severe and pervasive enough to interfere with performance/work environment. Fearn admits she was annoyed by the alleged conduct, but there is no evidence it rose to the level of being severe or pervasive enough to establish a hostile work environment, i.e., good cause for leaving.

The evidence in the record indicates that Mr. Steed made comments related to Fearn's personal and religious life only once during the six months prior to Fearn's resignation. Fearn documented these comments in her "journal." (*See* Exhibit 11, p. 43). However, Fearn's own commentary and documentation of this incident indicates that she did not take it seriously and was not really listening, as is shown by the tone and wording of the journal entry:

David asked me about getting married and said "you know its tough to bring two families together especially when you have kids I don't think you guys can do it" "you have to be careful and work at it, I am not sure it will be worth it to you or not sure this is what you should be doing" He didn't like it because I wasn't really receptive to hear what he had to say and yet **I just let him babble on and on** about me and my personal life and my finances, and about being at church and making the boys go to church and how hard it will be to be married and I am stubborn enough that it just might not work" and then he gave me a little bit of an attitude talk because **I wasn't listening** or liking what he was telling me. **I just shrugged my shoulders.**

(Exhibit 11, p. 43) (emphasis added). Good cause "must not be extended to include purely personal and (subjective) reasons which are unique to the employee - it must require that such cause is not

a condition which by common knowledge is usual where accompanied by minor irritations.” *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 758, 589 P.2d 89, 93 (1979) (citing *Boodry v. Eddy Bakeries, Inc.*, 88 Idaho 165, 397 P.2d 256 (1964)). Based on Fearn’s documentation of the incident with Mr. Steed, including her noted reaction to his comments, she saw Mr. Steed’s comments as “minor irritations.” Fearn’s failure to mention any of the alleged “harassment” in her resignation letter is further indication that she did not perceive his comments or inquiries as severe and pervasive enough to alter her working environment.² Fearn’s allegations as supported by her own documentation are simply not enough to rise to the level of good cause or a hostile work environment.

3. Fearn’s Conclusory Statements that She Attempted to Address this Situation with Mr. Steed is not Supported by Substantial and Competent Evidence

Notably absent from Fearn’s resignation letter and journal during the relevant time periods is any mention of Fearn’s attempts to address her concerns about Mr. Steed’s comments with her employer. After the March 30, 2009, comments by Mr. Steed about Fearn’s impending marriage, rather than seeking a resolution or “viable employment option,”

² It is unclear whether Fearn’s initial statement to the Idaho Department of Labor and Commerce is part of the record. It is not included as an exhibit, but it would be similar to a pleading, i.e., complaint, which is generally available for consideration on appeal. To the extent Claimant’s Statement is part of the record and available for consideration by the Industrial Commission, it is attached as Exhibit A. In her initial statement, Fearn reported nothing about harassment or discrimination. In fact, she admitted she would not have quit if two incidences related to sales had not happened, neither of which would amount to discrimination or harassment. In addition, she stated: “I didn’t feel like I had a choice. These issues have been going on for the past 6 months. I feel like I was treated like I didn’t know how to do my job.”

she merely shrugged her shoulders. (See Exhibit 11, p. 43).³ These actions do not demonstrate any effort on Fearn's part to explore "all viable employment options" before making the decision to quit. *Moore v. Melaleuca*, 137 Idaho 23, 28, 43 P.3d 782, 787 (2002).⁴

In fact, had Fearn indicated she was considering leaving because of Mr. Steed's comments and inquiries, the issue could have possibly been resolved. Instead, Fearn specifically stated in her resignation letter that she was leaving because, for the past six months, her "skills and experience as a sales person are continually overlooked and undermined." (Exhibit 3). Mr. Steed responded, "[w]hile I disagree with your employment characterization of the last six months, I accept your resignation." (Exhibit 4). Mr. Steed had no notice that comments or inquiries he had made primarily months or years earlier were Fearn's reason for leaving.

Fearn's burden was to demonstrate that she had good cause to resign. She failed to produce substantial and competent evidence that Mr. Steed created a hostile working environment that was severe or pervasive enough to quit or that she exhausted all viable

³ In its Decision and Order, the Industrial Commission concludes that Fearn "exhausted all viable options by telling Mr. Steed repeatedly that her personal life was none of his business." (Decision and Order, p. 9). However, Mr. Steed's comments prompting this reaction from Fearn, and Fearn's comments to Mr. Steed on this issue were all made prior to the time period in which Fearn asserts her employer engaged in actions which caused her to quit.

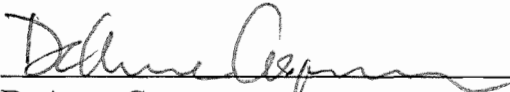
⁴ It is important to keep in mind that Fearn's decision to quit did not arise from Mr. Steed's comments in any event, and thus, the issue of Fearn's failure to explore all viable employment options should ultimately have not been reached in the first place.

options. Fearn's own resignation letter and journal demonstrate that her reason for quitting was because of performance issues. Only when Fearn was initially denied unemployment compensation benefits did she allege a hostile work environment. Even so, the allegations as asserted by Fearn which primarily occurred years and months before her resignation, do not support severe and pervasive harassment that would support good cause to quit.

III. CONCLUSION

Based upon evidence in the record, Fearn's eligibility for unemployment benefits should have been decided on the basis of her discharge from employment with Steed, and not on her resignation which was pending at the time of her discharge for misconduct. Additionally, Fearn did not meet her burden to show good cause for voluntarily leaving her employment with Steed with substantial and competent evidence. Her resignation letter and journal clearly indicate that she terminated her employment not because of Mr. Steed's prying into her personal affairs and allegedly sexist and paternalistic comments, but based upon her treatment regarding her abilities as a salesperson. The Industrial Commission clearly indicated that Fearn failed to show good cause as related to her treatment regarding her abilities as a salesperson. Therefore, Steed respectfully requests that the Industrial Commission reconsider its conclusions in its Decision and Order and affirm the decision of the Appeals Examiner in this matter to deny Fearn unemployment compensation.

Date: 9/19/09


DeAnne Casperson

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 19th day of September, 2009.

DOCUMENT SERVED:

MOTION FOR RECONSIDERATION

PARTIES SERVED:

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041

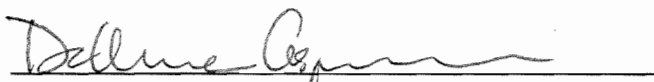
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DeAnne Casperson, Esq.



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 Fax: (208) 523-9518
 www.holdenlegal.com

September 21, 2009

VIA MAIL

Idaho Industrial Commission
 P.O. Box 83720
 Boise, Idaho 83720-0041

Re: *IDOL Case #4861-2009*

To whom it may concern:

Enclosed, please find the Claimant's Statement which was inadvertently not attached as Exhibit "A" to David and Marsha Steed's Motion for Reconsideration in Idaho Department of Labor case #4861-2009 which we filed last Saturday, September 19.

Thank you for your assistance with this matter.

Best regards,

DeAnne Casperson

RECEIVED
 IDAHO INDUSTRIAL COMMISSION
 SEP 23 A 10:51

Enclosure

Cc. Tracy E. Fearn
 Deputy Attorney General, Idaho Department of Labor

CLAIMANT'S STATEMENT:

These are the claimant's responses to Job Service's questions regarding the separation.

What day did you quit or inform your employer that you were quitting?

4/1/2009

Why did you quit on this day? What was the final incident/last straw that caused you to quit?

although there were many many reasons, the last straw was being threatened that if I did not increase my sales I would be fired and then they proceeded to take my sales from me and give them to the other sales person.

What specifically happened on the last day of work to cause you to quit?

n/a

If nothing happened on that day, what was the final incident (last straw) that caused you to quit?*

On 3/31/09 I made the decision to quit. I had been working with a customer from a different state on a sale. The customer called that day asking why we hadn't invoiced the sale yet. I went to Alexander, GM, also the owner's son, and asked him why it hadn't been invoiced. He said that they were going to wait a few days to process the invoice. That is all he said. Based on the delay, if he processed the invoice under his name, then he would have received the commission, not me. I assumed the sale would have been processed under his name. The next thing that happened that day was a sales meeting I had with Alexander. He told me I had to provide specific info on the sales deals I was working on. Specific info had never been requested before. There were 3 big deals that I had been working on. He told me that David would now handle those deals. I asked him why. He just said that his dad told him to tell me that he would handle those from that point forward. I felt like those sales had also been taken away from me. That night I made the decision to quit. Had those two incidents not happened, I would not have quit that day. On 4/1/09 I submitted my written resignation. I put a copy in separate envelopes for David and Alexander. David was not there when I did this. Alexander took both envelopes. I sit directly across from him and saw him open the envelope. He didn't say anything to me. He took his cell phone and went outside. I finished my shift and went home. On 4/2/09 I went to work. Around 10:00 a.m. Alexander told me to answer line 1. It was David. He said that he talked to Alexander and received my resignation. He asked if I would do them a favor and work one hour each day and cover for Alexander's lunches and he would pay me for the entire week. I told him that was fine. He said to arrange the time with Alexander. Within 5 minutes I went to talk to Alexander. I asked when he wanted me to come in and cover his lunch. He said to plan on 12-1 each day. I told him if he was sick or needed me to come in any other time, I would. He said OK. I went home and returned around 11:50 a.m. and covered his lunch. On 4/3/09 I came in to relieve him for lunch around 11:50 a.m. He told me to come in from now on exactly at noon. It was busy and I didn't leave until around 1:40 p.m. that day. On 4/6/09 I came in. Alexander told me I needed to talk to David. David handed me my check and a written response to my resignation letter. He said he were done with my employment here. I asked if this was because of the email I sent on Friday. He said yes; that was wrong of me. I asked why because Alexander sends his cell phone number out all the time to customers. He said Alexander was part owner and it didn't pertain to him and he was done with me. Re: the email. On 4/2/09 I emailed my customers letting them know I was no longer going to be there after 4/8/09. Within about an hour, I had many phone calls and emails from my customers. I was only working an hour so I couldn't respond to all of them. Around that same time Alexander was getting of copy of all my ingoing and outgoing emails. On 4/3/09 I sent out another email giving my customers my cell phone so they could call me after 4/8/09 if needed. I did that because I was only working one hour a day and didn't have the time to respond to them. I had been working with most of them for about 5 years. Apparently David did not like me sending out that email.

What was the negative effect of the situation on you?

I didn't feel like I had a choice. These issues have been going on for the past 6 months. I felt like I was treated like I didn't know how to do my job. It was stressful because I was told I had to increase my sales or I would be discharged yet sales were taken away from me. I have it all documented. (Claimant provided employment documentation) I did not see a doctor for my stress.

Why did you feel you had no choice but to quit on that day?*

I just felt like I couldn't take it any more.

What did you expect from the employer?

I expected them to let me do my job and get credited for my sales.

What were your job duties?

Sales

Length of time performed and work schedule?

7 years, Monday - Friday 8:30 - 5:30 pm

Why could you no longer perform those duties?*

Exhibit "A"

review each email, each phone call (including caller ID) every note.

What did you do to try and stay employed and when did you do it? (i.e.: leave-of-absence, transfer, file grievance, etc.)

I talked to David. The last time I talked to him was around 3/26/09. I told him I was frustrated they were taking over my deals and not giving me credit, Alexander was micromanaging me. He would tell me to do something but change the process the next day and monitor every little thing I did. David said that I reported to Alexander and I would do what he said.

If no attempts were made, why not?*

n/a

Other pertinent facts:

I am providing a copy of the documentation I kept. At first I didn't record the dates, but then I started to. My last check says I was only paid through 4/6/09 not 4/8/09 as my resignation stated.

By filing this claim electronically the claimant authorizes the above employer to release any records they have that they believe pertain to this claim for benefits.

<i>Idaho Department of Labor use only</i>	
Fact Finder Name: DOE\tlivsey	
Employer's Phone: (208) 522-1463	Claimant's phone: (208) 206-0734

Under Idaho Code 72-1371(2), it is a misdemeanor for an employer to knowingly make a false statement or willfully fails to disclose a material fact to prevent or reduce the payment of benefits to an individual entitled to them.

I-77-501-Q (ver 1007)

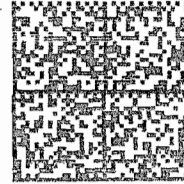
EQUAL OPPORTUNITY EMPLOYER



Holden Kidwell
Hahn & Crapo PLLC
LAW OFFICES

PO Box 50130

Idaho Falls, Idaho 83405



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Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041



46

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,)
)
 Claimant,)
)
 vs.)
)
 DAVID C. AND MARSHA STEED,)
)
 Employer,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
 _____)

IDOL # 4861-2009

FILED
SEP 24 2009
INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of September, 2009, a true and correct copy of **Employer's attorney's correspondence, referencing exhibit A not attached to Employers Request for Reconsideration originally filed September 21, 2009, and filed September 23, 2009** was served by regular United States mail upon the following:

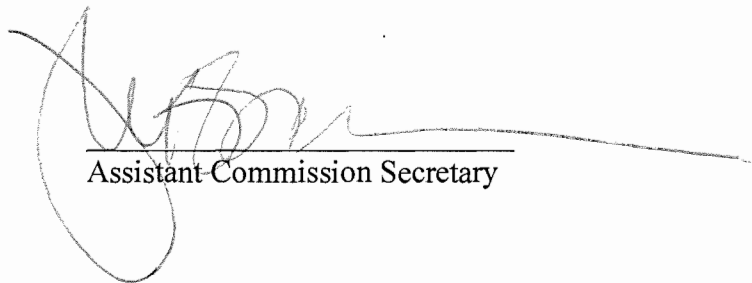
TRACY E. FEARN
1545 GARFIELD ST
IDAHO FALLS ID 83401-3033

DAVID C AND MARSH STEED
C/O DEANNE CASPERSON
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PO BOX 50130
IDAHO FALLS ID 83405

DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATEHOUSE MAIL
317 W MAIN ST
BOISE ID 83738

mcs

Cc:


Assistant Commission Secretary

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,)
)
 Claimant,)
 v.)
)
 DAVID C. AND MARSHA STEED,)
)
 Employer,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
 _____)

IDOL # 4861-2009

**DECISION AND ORDER ON
RECONSIDERATION**

FILED
DEC 24 2009
INDUSTRIAL COMMISSION

Employer filed a request for reconsideration pursuant to Idaho Code § 72-1368(7). Employer requests reconsideration of the Idaho Industrial Commission's Decision and Order filed on August 31, 2009. The Commission reversed the Decision issued by an Appeals Examiner with the Idaho Department of Labor (IDOL). The Commission conducted a *de novo* review of the record and found that Claimant had good cause related to her employment for quitting her job and that Employer's account is chargeable for experience rating purposes.

Claimant worked as a salesperson for Employer's farm equipment re-sale operations from January 2002 until April 2009. Claimant submitted a letter of resignation on April 1, 2009, stating that her last day would be April 8, 2009. Claimant alleges that she quit because she was threatened, discriminated against, and harassed. On April 5th, Claimant sent an e-mail to approximately 7,500 clients informing them that after April 8th, she could be reached on her cellular phone. Employer discharged Claimant on April 6th for sending out the mass e-mail.

In the request for reconsideration, Employer argues that Claimant's separation should be characterized as a discharge, not a quit. Employer properly discharged Claimant because she was using the company sales clientele list for a future personal sales platform. Employer

contends that even if the separation is viewed as a quit, Claimant did not prove good cause connected with her employment.

DISCUSSION

The Appeals Examiner's Decision and the Commission's Decision and Order begin with the premise that the only separation issue is Claimant's quit. At the hearing, both parties agreed that Claimant quit. On reconsideration, Employer argues that although Claimant quit, her later, unrelated discharge should be the basis of the determination pursuant to IDAPA 09.01.30.450.08.

.08 Unrelated Discharge Prior to Pending Resignation. A claimant, discharged before a pending resignation has occurred, for reasons not related to the pending resignation, shall have his eligibility determined on the basis of the discharge, not on the pending resignation.

IDAPA 09.01.30.450.08.

A review of the facts, in particular the dates of Claimant's resignation and Employer's discharge of Claimant, shows that the IDAPA is applicable to this case. Employer discharged Claimant on April 6th, during her pending resignation which was to conclude on April 8th. Employer states that it discharged Claimant for the mass e-mail she sent, not because she resigned. Claimant's last day of work was April 6, 2009. As such, we find that Employer discharged Claimant for reasons not related to her pending resignation. Although the case was previously viewed as a quit, the facts in the record require the application of IDAPA 09.01.30.450.08.

Idaho Code § 72-1366(5) provides that a claimant is ineligible for unemployment insurance benefits if that individual's unemployment resulted from the claimant's discharge for employment-related misconduct. What constitutes "just cause" in the mind of an employer for dismissing an employee is not the legal equivalent of "misconduct" under the Idaho Employment Security Law. The two issues are separate and distinct. Therefore, whether the employer had reasonable grounds according to its standards for dismissing a claimant is irrelevant. Our only concern is whether the reasons for discharge constituted "misconduct" connected with the

claimant's employment such that the claimant can be denied unemployment benefits. Beaty v. City of Idaho Falls, 110 Idaho 891, 892, 719 P.2d 1151, 1152 (1986).

The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer. Appeals Examiner of Idaho Dept. of Labor v. J.R. Simplot Co., 131 Idaho 318, 320, 955 P.2d 1097, 1099 (1998). If the discharging employer does not meet that burden, benefits must be awarded to the claimant. Roll v. City of Middleton, 105 Idaho 22, 25, 665 P.2d 721, 724 (1983); Parker v. St. Maries Plywood, 101 Idaho 415, 419, 614 P.2d 955, 959 (1980).

The Idaho Supreme Court has established three grounds upon which to determine whether Claimant has engaged in "misconduct" as it applies to eligibility for unemployment benefits. The Idaho Supreme Court defines misconduct as a willful, intentional disregard of the employer's interest; a deliberate violation of the employer's rules; or a disregard of standards of behavior which the employer has a right to expect of its employees. Campbell v. Bonneville County Bd. of Comm'rs, 126 Idaho 222, 225, 880 P.2d 252, 255 (1994). Further, the Court requires the Commission to consider all three grounds in determining whether misconduct exists. Dietz v. Minidoka County Highway Dist., 127 Idaho 246, 248, 899 P.2d 956, 958 (1995).

Under the "standards of behavior" analysis, the employer must show by a preponderance of the evidence that it communicated its expectations to the claimant, or that its expectations "flowed normally" from the employment relationship. Further, the employer must demonstrate that those expectations were objectively reasonable as applied to the claimant. As the Idaho Supreme Court has pointed out, an "employer's expectations are ordinarily reasonable only where they have been communicated to the employee." Folks v. Moscow School District No. 281, 129 Idaho 833, 838, 933 P.2d 642, 647 (1997).

Notably, there is no requirement that the employer must demonstrate that the employee's behavior was subjectively willful, intentional, or deliberate in his or her disregard of the employer's expectations. Welch v. Cowles Publishing Co., 127 Idaho 361, 364, 900 P.2d 1372,

1375 (1995). Because the employer need not demonstrate some form of “malice” on the part of the employee, what communication did or did not take place between the employer and the claimant becomes a key element in these cases. An employee can only be held accountable for breaching those expectations that he or she understood, explicitly or implicitly, and was capable of satisfying. Puckett v. Idaho Department of Corrections, 107 Idaho 1022, 695 P.2d 407 (1985).

Claimant worked for Employer as a salesperson. Claimant alleges that Employer’s owner threatened, harassed, and discriminated against her. Because of these issues, Claimant submitted her resignation on April 1, 2009. Claimant’s last day was to be April 8, 2009. On or about April 5th, Claimant sent an e-mail to approximately 7,500 clients stating that after April 8, 2009, she could be reached at her cellular phone number. Employer discharged Claimant on April 6, 2009, because of the mass e-mail.

At hearing, Mr. Steed, the owner, testified that the e-mail was unethical and threatening. Claimant testified that she was not going into a competing business; she wanted to inform her customers that she would no longer be working at Employer’s business and wanted a way for her customers to reach her. In the reconsideration, Employer argues that Claimant breached the Employer’s expectation that all Claimant’s e-mails be reviewed before they are sent. Although Claimant made a notation in her journal regarding this new expectation, neither party made mention of it at hearing. Mr. Steed testified that it was unethical and threatening and, in a letter, he stated that when he discovered she was using the client list, he could no longer trust Claimant. (Exhibit 5, p. 6). At no point does Employer claim that it communicated to Claimant the expectation that someone review every e-mail before it was sent. Nor did Employer make this argument when it discharged Claimant. The Commission finds that no expectation was communicated and in practice regarding having a supervisor review every e-mail Claimant drafted before she sent it. Further, the Commission finds that the expectation to have a supervisor review all e-mails does not flow normally from the employment relationship.

While it is understandable that Employer was not happy about Claimant e-mailing a large number of customers about her departure from Employer's business, we cannot find that it violated any communicated expectations or expectation which naturally flowed from the employment relationship.

Next, we address whether Claimant's conduct constitutes an intentional disregard of the employer's interest or a deliberate violation of the employer's rules. Sending an e-mail to a large number of Employer's customers informing them that Claimant could be reached at her cellular number after April 8, 2009, surely tipped many customers off that Claimant was ending her employment relationship with Employer. But it does not necessarily follow that it was an intentional disregard of the employer's interest or a deliberate violation of the Employer's rules. Claimant did not state or imply that she would be working for someone else, which might be against Employer's interest. Any speculation as to what the customers implied from the e-mail is pure speculation on Employer's part. Employer did not argue that Claimant's e-mail violated any rule that was in place.

Although Claimant's discharge was a decision within Employer's discretion, it bears repeating that the burden of demonstrating that Employer discharged Claimant for employment-related misconduct rests strictly on Employer. The evidence in this record is insufficient to establish that Claimant's behavior in sending out the e-mail in question amounted to misconduct. Therefore, Employer has failed to meet its burden of proof. Because Employer has not met its burden in demonstrating that it discharged Claimant for employment-related misconduct, Claimant is eligible for unemployment benefits.

Because we conclude that Employer discharged Claimant for reasons other than employment-related misconduct, we find that Employer's account is chargeable for experience rating purposes.

CONCLUSIONS OF LAW

I

Employer discharged Claimant for reasons other than employment-related misconduct

II

Employer's account is chargeable for experience rating purposes.

ORDER

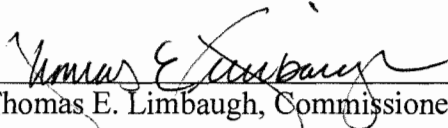
Based upon the foregoing reasons, Employer's Motion for Reconsideration is GRANTED. The Decision and Order is AFFIRMED as modified regarding the type of separation, but resulting in the same eligibility conclusion.

IT IS SO ORDERED.


DATED this 24 day of December 2009.

INDUSTRIAL COMMISSION

R.D. Maynard, Chairman




Thomas E. Limbaugh, Commissioner



Thomas P. Baskin, Commissioner

ATTEST:



Assistant Commission Secretary



CERTIFICATE OF SERVICE

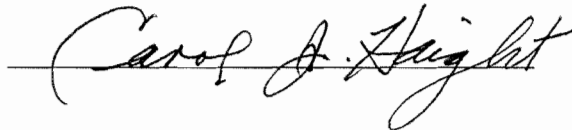
I hereby certify that on 24 day of December 2009, a true and correct copy of the foregoing **DECISION AND ORDER ON RECONSIDERATION** was served by regular United States mail upon each of the following:

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PO BOX 3569
IDAHO FALLS ID 83404

DAVID C AND MARSHA STEED
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DEPUTY ATTORNEY GENERAL
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sc

A handwritten signature in cursive script, reading "Carol A. Haight", is written over a horizontal line.

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Attorneys for Employer/Appellant

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,
 Claimant/Respondent,
 v.
 DAVID C. AND MARSHA STEED,
 Employer/Appellant,
 and
 IDAHO DEPARTMENT OF LABOR,
 Respondent.

IDOL NO. 4861-2009

NOTICE OF APPEAL

FILED

JAN 26 2010

INDUSTRIAL COMMISSION

TO: THE ABOVE NAMED RESPONDENT, TRACY E. FEARN, THE IDAHO DEPARTMENT OF LABOR, THE IDAHO INDUSTRIAL COMMISSION, AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

- The above named Appellants, David C. Steed and Marsha Steed appeal against the above named Respondent to the Idaho Supreme Court from the Decision and

1 - Notice of Appeal

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Attorneys for Employer/Appellant

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TRACY E. FEARN,

Claimant/Respondent,

v.

DAVID C. AND MARSHA STEED,

Employer/Appellant,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

IDOL NO. 4861-2009

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, TRACY E. FEARN, THE IDAHO DEPARTMENT OF LABOR, THE IDAHO INDUSTRIAL COMMISSION, AND THE CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

1. The above named Appellants, David C. Steed and Marsha Steed appeal against the above named Respondent to the Idaho Supreme Court from the Decision and

1 - Notice of Appeal

Order on Reconsideration entered in the above entitled proceeding on the 24th day of December, 2009.

2. That the parties have a right to appeal to the Idaho Supreme Court, and the order described in paragraph 1 above is an appealable order under and pursuant to Rule 11(d) of the Idaho Appellate Rules and Rule 12 of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law.
3. Appellants assert the following issues on appeal:
 - (a) whether the Industrial Commission erred in finding Tracy E. Fearn was discharged for reasons other than employment-related misconduct; and
 - (b) whether the Industrial Commission erred by failing to determine whether Tracy E. Fearn had good cause to quit.
4. No order has been entered sealing any portion of the record.
5.
 - (a) A transcript of the unemployment compensation hearing is requested.
 - (b) The Appellants request the preparation of the following portions of the Unemployment Compensation hearing in hard copy electronic format both:
 - (1) Unemployment Compensation Hearing of May 28, 2009, before the Appeals Bureau of the Idaho Department of Labor, Appeals Examiner Brent Marchbanks presiding.
6. The Appellants request the following documents to be included in the agency's record in addition to those automatically included under Rule 28, I.A.R.:

2 - Notice of Appeal

All Exhibits submitted to the Industrial Commission as part of the record, which include the Exhibits listed below in paragraph 7.

7. The Appellants request the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court:

Ex. 1 - Notice of Telephone Hearing (3 pages)

Ex. 2 - "Important Information About Your Hearing" (2 pages)

Ex. 3 - Correspondence from Tracy Fearn to David Steed, Alexander Steed, and David Steed Company dated April 1, 2009, tendering Ms. Fearn's resignation (1 page)

Ex. 4 - Correspondence from David Steed to Tracy Fearn dated April 6, 2009 accepting Ms. Fearn's resignation (1 page)

Ex. 5 - Documents submitted to Idaho Department of Labor by David Steed Company regarding Ms. Fearn's performance (9 pages)

Ex. 6 - Background check information regarding Ms. Fearn and signs displayed by Ms. Fearn in the workplace (4 pages)

Ex. 7 - Correspondence submitted to Idaho Department of Labor by David Steed Company dated April 29, 2009, responding to Ms. Fearn's allegations (2 pages)

Ex. 8 - Notes and documents submitted to the Idaho Department of Labor on April 30, 2009 by Tracy Fearn (13 pages)

3 - Notice of Appeal

Ex. 9 - Eligibility Determination - Unemployment Insurance Claim (2 pages)

Ex. 10 - Request for Appeals Hearing by Tracy Fearn (1 page)

Ex. 11 - Email, notes and journal submitted by Tracy Fearn (45 pages)

Ex. 12 - Employer data (1 page)

8. I certify:

(a) That a copy of this notice of appeal has been served on each agency of whom a transcript has been requested as named below at the address set out below:

Name and address: Idaho Industrial Commission, PO Box 83720, Boise, Idaho 83720-0041

(b) (1) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript.

(2) That the Appellants are exempt from paying the estimated transcript fee because _____.

(c) (1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

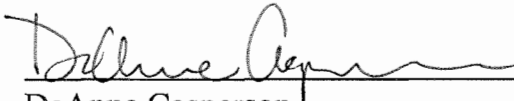
(2) That the Appellants are exempt from paying the estimated fee for preparation of the record because _____.

(d) (1) That the appellate filing fee has been paid.

(2) That Appellants are exempt from paying the appellate filing fee because _____.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED this 26th day of January, 2010.



DeAnne Casperson
Holden, Kidwell, Hahn & Crapo, P.L.L.C.
Attorney for the Appellant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing or by facsimile, with the correct postage thereon, on this 21st day of January, 2010.

DOCUMENT SERVED:
PARTIES SERVED:

NOTICE OF APPEAL

Idaho Industrial Commission
P.O. Box 83720
Boise, Idaho 83720-0041


() *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Overnight Mail*

Tracy E. Fearn
PO Box 3569
Idaho Falls, Idaho 83403

() *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Overnight Mail*

Deputy Attorney General
Idaho Department of Labor
317 W. Main Street
Boise, Idaho 83735

() *First Class Mail*
() *Hand Delivery*
() *Facsimile*
() *Overnight Mail*



DeAnne Casperson

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

2010 FEB -2 AM 8:26

TRACY E. FEARN,)
)
) Respondent/Claimant,)
)
) vs.)
)
) DAVID C. AND MARSHA STEED,)
)
) Appellant/Employer,)
)
) and)
)
) IDAHO DEPARTMENT OF LABOR.)
_____)

IDOL # 4861-2009

Supreme Court No 37368

Appeal From: Industrial Commission,
R.D. Maynard, Chairman, presiding.

Case Number: IDOL #4861-2009

Order Appealed from: Decision and Order filed August 31, 2009 and
Decision and Order on Reconsideration, filed
December 24, 2009

Representative for Claimant: Tracy E. Fearn, Pro Se
PO Box 3569
Idaho Falls ID 83404

Representative for Employers: DeAnne Casperson
Holden Kidwell Hahn & Crapo
1000 Riverwalk Drive Ste 200
P.O. Box 50130
Idaho Falls, ID 83405

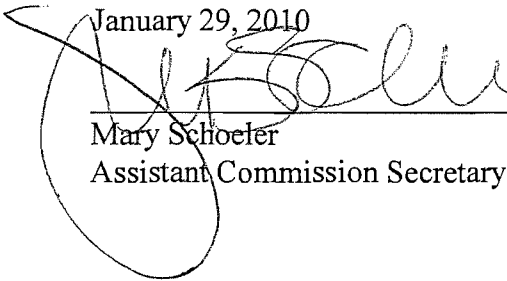
Representative for IDOL: Tracey K. Rolfsen
Deputy Attorney General
317 W Main St
Boise Id 83735

CERTIFICATE OF APPEAL - 1

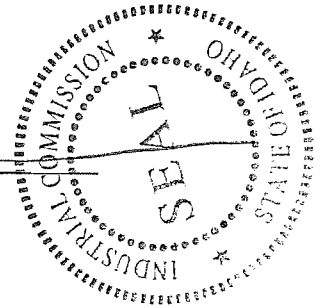
FILED - ORIGINAL
FEB - 2 2010
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

63

Appealed By: David C. and Marsha Steed/Appellant
Appealed Against: Tracy E. Fearn, Pro Se/Respondent
and
Idaho Department of Labor/Respondent
Notice of Appeal Filed: January 26, 2010
Appellate Fee Paid: \$86.00
Transcript: Transcript will be ordered
Dated: January 29, 2010



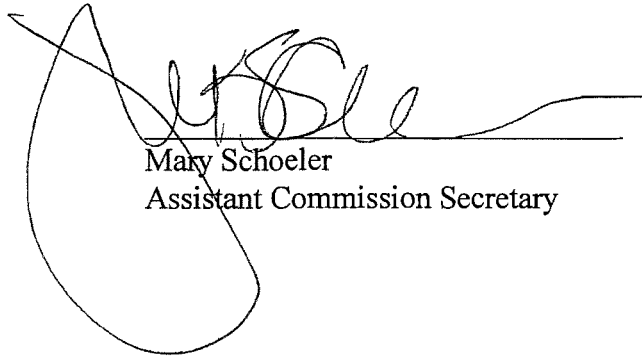
Mary Schoeler
Assistant Commission Secretary



CERTIFICATION

I, Mary Schoeler, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed January 26, 2010; Decision and Order, filed August 31, 2009; and Order Denying Reconsideration, filed December 24, 2009; and the whole thereof.

DATED: January 29, 2010



Mary Schoeler
Assistant Commission Secretary

CERTIFICATION OF RECORD

I, Carol Haight, the undersigned Assistant Commission Secretary of the Industrial Commission, do hereby certify that the foregoing record contains true and correct copies of all pleadings, documents, and papers designated to be included in the Agency's Record on appeal by Rule 28(3) of the Idaho Appellate Rules and by the Notice of Appeal, pursuant to the provisions of Rule 28(b).

I further certify that all exhibits admitted in this proceeding are correctly listed in the List of Exhibits (i). Said exhibits will be lodged with the Supreme Court after the Record is settled.

DATED this 3rd day of March, 2010.


Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

TRACY E. FEARN,)
)
 Claimant/Respondent,)
)
 vs.)
)
 DAVID C. AND MARSHA STEED,)
)
 Employer/Appellant,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent.)
)
 _____)

SUPREME COURT #37368
NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts; and
Tracy E. Fearn, Pro Se, Claimant/Respondent; and
DeAnne Casperson, Employer/Appellant, and
Tracey K. Rolfsen, Idaho Department of Labor, Respondent.

YOU ARE HEREBY NOTIFIED that the Agency’s Record was completed on this date and,
pursuant to Rule 24(a) and Rule 27(a), Idaho Appellate Rules, copies of the same have been served
by regular U.S. mail upon each of the following:

For Claimant/Respondent:
Tracy E. Fearn, Pro Se
PO Box 3569
Idaho Falls, ID 83404

For Employer/Appellant:
DeAnne Casperson
Holden, Kidwell, Hahn, and Crapo
PO Box 50130
Idaho Falls, ID 83405-0130

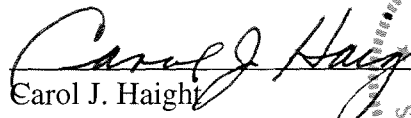
NOTICE OF COMPLETION - 1

For Respondent:

Tracey K. Rolfsen
Idaho Department of Labor
317 West Main Street
Boise, ID 83735

YOU ARE FURTHER NOTIFIED that pursuant to Rule 29(a), Idaho Appellate Rules, all parties have twenty-eight days from the date of this Notice in which to file objections to the Agency's Record or Reporter's Transcript, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record or Reporter's Transcript are filed within the twenty-eight day period, the Agency's Record and Reporter's Transcript shall be deemed settled.

DATED this 3rd day of March, 2010.


Carol J. Haight
Assistant Commission Secretary

