

6-21-2011

Stark v. Assisted Living Concepts, Inc. Agency's Record Dckt. 38715

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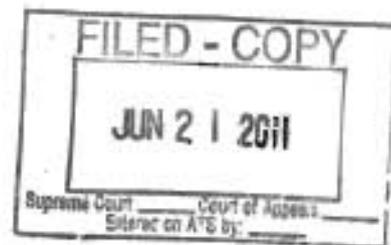
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LAW CLERK BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BROOKE A. STARK,)
)
 Claimant/Respondent,)
)
 vs.)
)
 ASSISTED LIVING CONCEPTS,)
)
 Employer/Appellant,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
)
 Respondent,)
)

SUPREME COURT NO# 38715

AGENCY'S RECORD



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Claimant/Appellant

Brooke A. Stark
 23505 E. Maxwell Ct.
 Liberty Lake, WA 99019

For Employer/Respondent

Nancy J. Garrett
 PO Box 829
 Boise, ID 83701

For Respondent

Tracey K. Rolfsen
 Deputy Attorney General
 Idaho Department of Labor
 317 W. Main St.
 Boise, Idaho 83735

38715

COPY

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 Claimant/Respondent,)
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SUPREME COURT NO# 38715
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317 W. Main St.
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LIST OF EXHIBITS

Hearing Transcript taken December 27, 2010 shall be filed with the Supreme Court:

Exhibits admitted into record before Idaho Department of Labor

- | | | |
|----|--|---------|
| 1. | Notice of Telephone Hearing, mailed 12/8/10 | 3 pages |
| | Revised Notice of Telephone Hearing, mailed 12/14/10 | 3 pages |
| 2. | Important Information about your Hearing Read Carefully | 2 pages |
| 3. | Eligibility Determination Unemployment Insurance Claim | 2 pages |
| 4. | Faxed letter from TALX regarding appeal of Eligibility Determination
Unemployment Insurance Claim | 8 pages |
| 5. | Employers Data | 2 pages |

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

BROOKE A STARK,)
SSN: [REDACTED])
Claimant)
vs.)
ASSISTED LIVING CONCEPTS INC,)
Employer)
and)
IDAHO DEPARTMENT OF LABOR)

DOCKET NUMBER 1283-2011
DECISION OF APPEALS EXAMINER

FILED
JAN 19 2011

INDUSTRIAL COMMISSION

DECISION

Benefits are **DENIED** effective November 7, 2010.

The employer's account is **NOT CHARGEABLE** on the claim.

The Eligibility Determination dated November 23, 2010, is hereby **REVERSED**.

HISTORY OF THE CASE

The above-entitled matter was heard by Thomas J. Holden, Appeals Examiner for the Idaho Department of Labor, on December 27, 2010, by telephone in the City of Boise, in accordance with §72-1368(6) of the Idaho Employment Security Law.

The claimant, Brooke Stark, participated in the hearing.

The employer, Assisted Living Concepts Inc., was represented in the hearing by Lori Bebo. Rick Parker also participated in the hearing as a witness for the employer.

ISSUES

The issues before the Department are whether unemployment is due to the claimant quitting voluntarily and, if so, whether with good cause connected with the employment -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, and whether the employer's account is

properly chargeable for experience rating purposes for benefits paid to the claimant, according to §72-1351(2)(a) 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 as the resident director of Sylvan House for Assisted Living Concepts from April 21, 2008, through October 29, 2010.
2. The employer discharged the claimant for insubordination. The claimant refused to disclose the source of a rumor that the employer was planning to close Teton House.
3. The claimant was having a conversation with the regional director of sales, Matt Cable. The claimant asked Mr. Cable if he had heard the rumor that Teton House was closing. Mr. Cable later contacted Craig Boyes in human resources about what he had heard.
4. Mr. Boyes then contacted the claimant and asked where the claimant had heard the rumor that Teton House was closing. The claimant informed Mr. Boyes that she was not willing to disclose that information.
5. The employer then called the claimant a few minutes after the claimant had spoken to Mr. Boyes. Mr. Boyes and the President and CEO, Lori Bebo, were present on the call along with the claimant. The claimant again was asked where she had heard the rumor, and the claimant stated that she didn't want to share that information.
6. Ms. Bebo explained to the claimant that it was important that the employer learn the source of the rumor and that the claimant needed to disclose where she had heard the rumor. The claimant stated that she would have to "take one for the team," and declined to provide the information.
7. 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 any other employer.

AUTHORITY

Section 72-1366(5) of the Idaho Employment Security Law provides in pertinent part, that a claimant is ineligible for unemployment compensation benefits if he or she was discharged for misconduct in connection with employment. The issue is not whether the employer had reasonable grounds for discharging claimant, but rather whether the reasons for discharge constituted "misconduct" in connection with claimant's employment such that claimant can be denied unemployment benefits. The two issues are separate and distinct. Beaty vs. City of Idaho Falls, 110 Idaho 891, 719 P.2d 1151 (1986).

The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer and, where the burden is not met, benefits must be awarded the claimant. Roll vs. City of Middleton, 105 Idaho 22, 665 P.2d 721 (1983); Parker vs. St. Maries Plywood, 101 Idaho 415, 614 P.2d 955 (1980); Hart vs. Deary High School, 126 Idaho 550, 552, 887 P.2d 1057, 1059 (1994). The Idaho Supreme Court has defined misconduct as a willful, intentional disregard of the

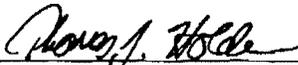
employer's interest; a deliberate violation of the employer's rules; or a disregard of standards of behavior which the employer has a right to expect of his employees. John vs. S.H. Kress and Company, 78 Idaho 544, 307 P.2d 217 (1957).

For misconduct in standard-of-behavior cases, a two-pronged test has been delineated: (1) whether the employee's conduct fell below the standard of behavior expected by the employer; and (2) whether the employer's expectation was objectively reasonable in the particular case. However, the employer's expectations must be communicated to the employee. Davis vs. Howard O. Miller Co., 107 Idaho 1092, 695 P.2d 1231 (1984); Puckett vs. Idaho Department of Corrections, 107 Idaho 1022, 695 P.2d 407 (1985).

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.

CONCLUSIONS

The employer discharged the claimant for insubordination after the claimant refused to disclose the source of a rumor that Teton House was closing. The employer's directive that the claimant disclose the source of the rumor was reasonable. The employer had a legitimate reason for wanting to determine the source of the rumor in order to address the matter and prevent further damage to the employer's interests. The claimant's conduct in refusing to disclose the source of the rumor was conduct that fell below a standard of behavior that the employer had a right to expect, and also demonstrated a willful disregard for the employer's interests. It has been established that the claimant was discharged for misconduct in connection with the employment. Therefore, the claimant is ineligible for unemployment insurance benefits, and the employer's account is not chargeable on the claim.



Thomas W. Holden
Appeals Examiner

Date of Mailing December 30, 2010 Last Day To Appeal January 13, 2011

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 mailed to:

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

Or delivered in person to:

Idaho Industrial Commission
700 S Clearwater Lane
Boise, ID 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.

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 December 30, 2010, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

BROOKE A STARK
23505 E MAXWELL CT
LIBERTY LAKE WA 99019

ASSISTED LIVING CONCEPTS INC
c/o TALX UC EXPRESS
PO BOX 173860
DENVER CO 80217-0860





Docket No yr

Notes

Participant Name

SSN (like 999-99-9999-0)

Must have both Docket No and Year to enter notes.

Docket	Claimant	Employer	Office	FileDate
1283-2011	BROOKE A STARK	ASSISTED LIVING CONCEPTS I	9	12/02/2010

Issues:

Hearing Schedule:

020-Discharge; 021-Chargeability;

Appellant:

Updated: By:

Brooke A. Stark / Assisted Living Concepts, Inc. - Talx Uc Express

Notes:

2011-01-14 08:49:38-(eg) - IC Protest received; processed as indicated.;

2010-12-14 10:36:37-(tg) - Mailed Revised NTH;

2010-12-14 10:28:42-(tg) - Called CL Brooke Stark (979) 587-1745. left voice mail re: new hearing date and time. Also sent e-mail per preferences on Idaho Works bstark7@hotmail.com ;

2010-12-14 10:16:22-(tg) - e-mailed Talx rep @ randal.crocker@talx.com re: new hearing date and time.;

2010-12-14 10:14:00-(tg) - Re-scheduled from 12/20 11:30 TH to 12/27 11:30 TH;

2010-12-14 09:48:19-(ms) - recv'd fax from TALX.Reqt to PP.Witness in Hawaii. Gave to Theresa;

January 9, 2011

Idaho Industrial Commission
Judicial Division, IDOL Appeals
PO Box 83720
Boise, Idaho 83720-0041

2011 JAN 13 1 P 2: 16
RECEIVED
INDUSTRIAL COMMISSION

SUBJECT: Docket Number 1283-2011: Decision of Appeals Examiner
Brooke A Stark vs. Assisted Living Concepts

To Members of the Idaho Industrial Commission:

I am writing this letter as I'm appealing to you for a reversal of the Eligibility Determination in my Unemployment Benefits. My reasons for this appeal are as follows:

1. I was unfairly and unlawfully terminated by my employer.
2. I feel the decision of the Appeals Examiner was based on testimony that was erroneous and not true on the part of the employer.
3. I am relying on my benefits, for the first time in many years of supporting the system, to support myself and children while looking for employment in this time of recession and limited jobs.

On Friday, October 29, 2010, I, Brooke Stark was having a phone conversation, as I usually did every Friday, with the Regional Director of Sales and Marketing, Matt Cable. We were discussing the week's ending census numbers and state of other facilities in the Region, where he disclosed information to me that was of confidential nature. During this conversation Teton House, an assisted living facility in Rexburg, Idaho came up. Teton House had two private pay residents at that time and one of them had turned in their 30 Day Notice to move out. The discussion turned to what was the company going to do with Teton House. Matt said he did not know, but that they would be smart to close the facility. I mentioned to him that I heard (in a conversation that I agreed to keep confidential) the closing of the facility was already in the works. Nothing else was said about it and we went on to discuss other facilities in the Region. Later that evening I was called by Craig Boyes, the Divisional Director of Human Resources at home after business hours. I was busy trying to get my children's dinner and running my single parent household. He asked me where I had heard about Teton House as he had just gotten off the phone with Matt Cable. I stated I didn't feel it was necessary to disclose the source of the information as it was a confidential conversation. I had given my word to keep it confidential and felt it unreasonable to ask me information on another employee. He then proceeded to hang up. About 5 minutes later Laurie Bebo, the CEO of Assisted Living Concepts called me, again at home, and conferenced in Craig Boyes. She demanded to know where I had heard the Teton House information. I explained to her that I was told the information in confidence and didn't want to disclose where I had heard it as I did not want to void my principals and inform on another employee. She proceeded to tell me that I would be suspended pending an investigation if I didn't tell her. While it wasn't the right thing to say, but feeling very bullied, intimidated and

backed into a corner, I said, "I guess I will have to take one for the team." At that time I was told I was suspended. I asked her very specifically, "For what violation of the Employee Handbook am I being suspended for?" Her response was, "I don't know, that is why there will be an investigation." My question to the Commission is. Would you not know why you are suspending an employee if it was apparent that there was no wrong doing? After conversing several times over the weekend (October 30 & 31) and Monday (November 1), with my Regional Director of Operations and direct supervisor, Lisa Gascoigne, where she even stated she wished everyone would quit being so obnoxious and making this a mountain out of a mole hill, I was called into work on Tuesday, November 2, by Craig Boyes. It was at that time I was Terminated for Insubordination. My actual termination was back dated into October as this saved the company a months worth of benefits, like health care. They stripped away vacation that I had earned and stripped me of several days pay. I wrote a letter to Rick Parker, the VP of Human Resources at ALC in regards to my termination. A copy of this letter is included and Labeled EXHIBIT A. When I got his response back several weeks later I was shocked to see so many discrepancies in what ALC was basing their decision on and what had really happened. It was becoming apparent that someone in ALC had moved this to a personal level against me and was staging a major cover up. This response is included and Labeled EXHIBIT B. My only involvement was to ask one of my supervisors about Teton House. I did nothing to start or foster the rumor, they chose to "kill the messenger". Evaluation of my performance records at ALC show I was a strong performer and most recently taken a facility that had fallen below performance expectations and through my efforts brought many budget items such as food and labor in line and increased audit scores significantly.

Assisted Living Concepts appealed my Unemployment Eligibility as per their usual practice.

On Monday December 27, 2010 a telephone hearing was conducted by Thomas Holden, Appeals Examiner for the Idaho Department of Labor. I was present, as was Laurie Bebo, - it was shocking that the CEO and President of a publicly traded company earning over \$200 million a year in revenue and employing over 4100 employees would think it worth her time to participate in an unemployment hearing unless she was making it personal, and Rick Parker (as a witness for the employer, but Parker had not participated in any of the conversations or activities up to that point). Neither Craig Boyes nor Matt Cable were present, two people that would have been key to be able to interview and ask questions of. I was not able to have Lisa Gascoigne, my direct supervisor, be a witness for me as she had also been Terminated and I was unable to locate her. My concern is that Judge Holden based his decision that my conduct fell below the standard of behavior expected by the employer on incorrect and inaccurate information that was presented by Ms. Bebo. Her testimony that Teton House had to close as a result of me knowing this information, is not accurate and is untrue. There were only two private payer source residents at Teton House at the time, not eight as claimed by Ms. Bebo. One of these residents had already submitted their 30 Day Notice to move out of Teton House. The census at Teton House has fallen dramatically and two residents will not support a facility of 35 beds and its' support staff. My having knowledge of the company intentions about a facility over 500 miles from me had nothing to do with the closure of the facility as Ms. Bebo led Judge Holden to believe. I had no roll in the closing of Teton House. My interest was that there may be resources available with the closing that could be used to improve my facility.

Is not an employee that upholds their integrity and moral standards desirable in today's workforce? While I was upholding my integrity, my word, my bond, ALC compromised theirs in the testimony given, which I believe led Judge Holden to make a decision based on erroneous and incorrect information.

This decision brings me to the final reason for this appeal. I desperately need these Benefits. I am the single mother of three children. While I am fervently looking for employment I am depending on my Unemployment Wages to put food on my table and pay bills. \$334.00 per week does not stretch very far when raising three children and in this time of recession and limited job availability, is very much depended on. I have always contributed to government by paying my taxes and into the system. I never thought I would need to rely on that very system to get me through a tough time. But as I write this, I ask you to please reconsider the decision that was made and grant me this benefit. Not just for me, but for my children.

Sincerely,



Brooke Stark
23505 E. Maxwell Ct.
Liberty Lake, WA 99019
(979)587-1745

November 8, 2010

Rick Parker
VP of Human Resources
W140 N8981 Lilly Road
Menomonee Falls, WI 53051-2325

Re: Wrongful Termination

Dear Mr. Parker:

I am writing this letter in greavience to what I feel is my Wrongful Termination. I recognize that I serve at the pleasure and whim of management but at the time I no longer fulfill their pleasure, there are laws as well as corporate ethics that provide guidance as to how my termination should be handled. Both were violated in this instance.

On October 29, 2010 I was called by the Division Director of Human Resources, Craig Boyes, at my personal home, after normal working hours and asked where I had heard a rumor about another ALC residence. This was a rumor that had been brought up with one of my direct supervisors, a Regional Team member. I did not start the rumor: I did not spread the rumor: I just asked one of my direct supervisors if the rumor was true. I responded to Mr. Boyes that I didn't feel it was necessary to disclose that information and we ended the conversation. To inform on a coworker would have forced me to break a confidence as well as strip me of my integrity. Several minutes later I received a phone call from Laurie Bebo, with Craig being conferenced in on the call. She expressed to me that she wanted to know where I heard the information as well. I again expressed that I didn't feel it necessary to disclose my source of information, as it was just a rumor. Again, this would have forced me to break a confidence and would have removed my integrity. I was then told I would be "suspended pending an investigation". My response to this was, "I guess I will have to take one for the team." Perhaps this was not the best reply but I was obviously under a lot of pressure and it was apparent that the rumor was extremely sensitive to upper management and had struck a very sensitive place. They were certainly "killing the messenger" without regard to what the investigation might determine. At the end of the conversation I asked Laurie directly, "For what violation of the employee handbook am I being suspended?" Her response was, "I don't know, that is why it is pending an investigation." I clearly was not terminated at this time.

In Ms. Bebo's introductory letter in the Employee Handbook she states "we offer meaningful opportunities and teamwork in a positive atmosphere that will stimulate your mind as well as your character." Yet I was asked to compromise my character, my morals, and my integrity.

- Exhibit A - page 1 of 3 ~

I was later terminated in person by Mr. Boyes on November 2, 2010 for "Insubordination", for standing up for my morals and not revealing a confidence I was told, that after all, is "just a rumor".

My staff and I had worked hard to bring multiple budgets in line and to increase occupancy at Sylvan House. There were new Residents scheduled to move in over the weekend (October 30th and 31st) and into early November. Although I was on suspension, no one had been assigned to fill the void and provide guidance to either the staff or the families to facilitate the move-ins.

I was called repeatedly over the weekend (October 30th and 31st), as well as on November 1st and November 2nd, by my building Staff, sent email by my direct supervisor and helped the staff move-in, over the phone, the two new residents with whom families I had been working with. I responded to my fullest ability to each phone call and email and I provided the help and guidance that was being requested. This is something that still continues TODAY after my termination.

I ask you, does this sound like someone who is insubordinate and is not working for the good of ALC? I have given two and a half years to ALC in two different capacities. During this time I maintained a HIGH level of performance in both positions, even if I didn't always agree with the policies and procedures that were implemented. I have always presented this company in a positive manner when in discussion with co-workers, subordinates and the outside, a fact that can be proven by looking at the Regional Team Surveys from 2008 and 2009.

I asked Lisa, Regional Director of Operations and my Supervisor, on Monday if there was any progress in the investigation of the source of the rumor. I was told that there was none but an answer may be available the next day, Tuesday November 2nd. On November 2nd I was told that I was being terminated for insubordination and that my termination would be backdated to October 29, 2010. For both moral and legal reasons, backdating a termination is a Wrongful Termination. Let me remind you that that I am a single mother fighting MS and I have three young children and I'm sure you can see the impact that this has on all our lives. I recognize that a prolonged conflict over this matter, for me, is like being in a conflict with the proverbial 900 pound gorilla and it would deplete both our resources.

Since this is a Wrongful Termination I am recommending two possible solutions; The first being that my employment with ALC be reinstated, at the same position and salary; or the second recommendation is: My medical benefits be paid for November (since I did continue to work into the month), my final check include payment for the dates through the second of November, my unused two weeks of vacation be paid in full and finally one full months of severance pay be included.

- Exhibit A page 2 of 3 -

In the spirit of bringing this matter to a close, I will give the company a release and sign a confidentially agreement as long as both are mutually agreeable.

I am hoping the company can see the emotional and rash decision they have made and would expect them to have both the corporate ethics and legal business values to bring this matter to a mutually satisfactory close.

I will await your response to my recommendations and expect to hear from you by November 22, 2010. If you're in agreement with my recommendations then no further action in this situation will be taken.

Best Regards,

Brooke Stark

cc:

Lisa Gascoigne

Craig Boyes

Washington State Wage and Labor Board

- Exhibit A page 3 of 3 -

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Assisted Living Concepts, Inc.

2011 JAN 13 P 2: 17

RECEIVED
INDUSTRIAL COMMISSION

November 29, 2010

Brooke Stark
23505 E. Maxwell Ct.
Liberty Lake, WA 99019

Dear Brooke,

I received your letter in which you expressed your opinion that your termination was a violation of "laws as well as corporate ethics." I regret you feel this way; however I disagree with your conclusion that this was a "wrongful termination."

The facts surrounding your termination are as follows:

- On October 29, 2010 you called Matt Cable and told him that one of our Residences was going to close. This was a surprise to Matt who called Craig Boyes to get more information about a House closing.
- Craig Boyes immediately called you and asked who told you this information. Craig stressed this was a very serious situation. Telling someone a House is going to close causes serious ramifications for the staff, residents and Regional team. He asked you to disclose your source, but you declined because "you did not want to get anyone in trouble." Because of the seriousness of such information, the CEO, Laurie Bebo became involved.
- If such questions about a Residence closing got to the town, referral sources, or families, there could be an extremely serious, negative impact on the organization.
- In an attempt to determine the extent of this misinformation so damage control could be initiated, Laurie needed to backtrack to ensure that everyone who heard this misinformation could be told that it was not true. Toward this end, she called you.
- Laurie asked where you heard this misinformation; again, so she could back track and correct the error and stop it from spreading.
- You refused to tell her who told you a House was closing. This was an extremely important question; Laurie needed to obtain this information to protect the company from the potential damage such a rumor could cause. She wasn't asking casually, she needed to know who told you so she could react appropriately. This was a matter of utmost urgency.
- Even though the President and CEO of the company asked you to provide critical information, you refused.

Exhibit B 1/3

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- When Laurie informed you she was going to suspend you pending investigation, rather than cooperate knowing the seriousness of your refusal, you said, "I guess I'll have to take one for the team."
- In the employee handbook on page 22 one example of a Class III infraction is "Refusal to follow a direct order from a supervisor. (Insubordination)"
- The employee handbook says, "You will be discharged if an investigation reveals you committed a Class III infraction (page 22).
- The employee handbook also says, "No written notice is given to an employee who is suspended pending the investigation of a suspected work rule violation" (page 19).
- After reviewing the facts surrounding your refusal to cooperate and provide information requested by the CEO it was determined that you committed a Class III work rule violation, insubordination, and you were discharged effective the date of your suspension, October 29th.

Allow me to respond to some of your comments.

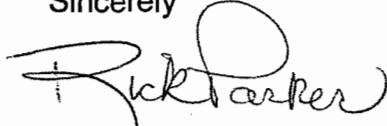
- You felt that telling the CEO who told you that a building was closing would compromise your character, morals, and integrity. I don't see how helping to stop a damaging rumor would compromise your character, morals or integrity. If you had told her, she would have called that person and told them it is not true and to please not tell anyone else. That would have been the end of this.
- You say that "for both moral and legal reasons, backdating a termination is a Wrongful Termination." I do not agree with your assessment. You were instructed to stop working effective October 29, 2010. As a manager of ALC you know our practice; specifically, when an employee is accused of a Class III offense, the manager suspends the employee and investigates (to avoid making a decision about discharge at the emotional time of the infraction). If the investigation exonerates the employee, he/she is paid for time missed. If the investigation supports the allegation, the employee's discharge is effective the date of the suspension.
- You say in your letter that you weren't spreading a rumor, but called to ask if the "rumor" was true. My investigation revealed you called Matt and said, "They are closing Teton House." Matt had not heard this so he called Craig to get more information. That is how rumors get started. The fact that it made it to the desk of the CEO after going through several individuals only supports that this rose to a level of concern. Although you say you were not spreading a rumor, I would disagree; this is exactly how rumors are spread. (However, you did admit later in your letter that this was a rumor and it was "extremely sensitive.")
- You refer to the decision to discharge you as an "emotional and rash decision" and you would expect ALC "to have both the corporate ethics and legal business values to bring this matter to a mutually satisfactory close." I don't feel the decision to discharge you for insubordination was either rash or emotional. It was based on your refusal to provide

information that was pertinent to the interests of the Company, its residents and employees.

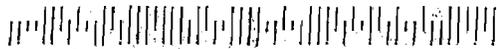
- You have requested that you be reinstated. Since it is the Company's position that you committed a Class III infraction and we followed the procedures in the handbook, our position is that the discharge will stand.

I realize this is not the conclusion you desired. If you need further information or have additional questions I can clarify, I will be glad to hear from you.

Sincerely

A handwritten signature in black ink that reads "Rick Parker". The signature is written in a cursive style with a large, looped initial "R".

Rick Parker
Vice President of Human Resources
Assisted Living Concepts, Inc.



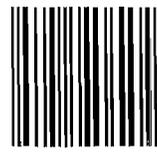
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INDUSTRIAL COMMISSION



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Idaho Industrial Commission
Judicial Division, IDOL Appeals
PO Box 83720
Boise, ID 83720-0041

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BROOKE A. STARK,)
SSN: [REDACTED])
)
Claimant,)
)
vs.)
)
ASSISTED LIVING CONCEPTS,)
)
Employer,)
)
and)
)
IDAHO DEPARTMENT OF LABOR.)
_____)

IDOL # 1283-2011

**NOTICE OF
FILING OF APPEAL**

**FILED
JAN 21 2011
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, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

PLEASE READ ALL THE RULES CAREFULLY

The Industrial Commission promptly processes all unemployment appeals in the order received. In the mean time, you may want to visit our web site for more information:
www.iic.idaho.gov.

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.

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

Calls Received by the Industrial Commission May Be Recorded

CERTIFICATE OF SERVICE

I hereby certify that on the 21ST day of January, 2011 a true and correct copy of the **Notice of Filing of Appeal and compact disc of the Hearing** was served by regular United States mail upon the following:

APPEAL

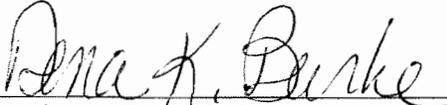
ASSISTED LIVING CONCEPTS INC.
C/O TALX UC EXPRESS
PO BOX 173860
DENVER CO. 80217-0860

APPEAL AND DISC

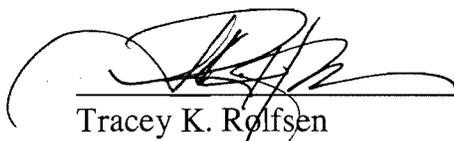
BROOKE A. STARK
23505 E. MAXWELL CT.
LIBERTY LAKE WA 99019

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

JS


Assistant Commission Secretary

DATED this 31~~st~~ day of January, 2011.



Tracey K. Rolfsen
Deputy Attorney General
Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE,
was mailed, postage prepaid, this 31~~st~~ day of January, 2011, to:

BROOKE A STARK
23505 E MAXWELL CT
LIBERTY LAKE WA 99019

ASSISTED LIVING CONCEPTS INC
C/O TALX UC EXPRESS
PO BOX 173860
DENVER CO 80217-0860

Kenna Andrews

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BROOKE A. STARK,)
SSN: [REDACTED])
)
Claimant,)
)
vs.)
)
ASSISTED LIVING CONCEPTS INC,)
)
Employer,)
)
and)
)
IDAHO DEPARTMENT OF LABOR.)
_____)

IDOL # 1283-2011
DECISION AND ORDER

FILED
FEB 28 2011
INDUSTRIAL COMMISSION

Appeal of a Decision issued by an Idaho Department of Labor Appeals Examiner finding Claimant ineligible for unemployment insurance benefits. REVERSED.

Claimant, Brooke A Stark, appeals a Decision issued by the Idaho Department of Labor (“IDOL” or “Department”) finding her ineligible for unemployment benefits. The Appeals Examiner found that: 1) Employer discharged Claimant for misconduct connected with employment; and 2) Employer’s account is not chargeable for experience rating purposes. Claimant and Employer participated in the hearing.

Claimant submitted additional evidence for consideration on appeal. (Claimant’s appeal, filed January 11, 2011). The Commission treats such submissions as a request for a new hearing. That issue is addressed below.

The undersigned Commissioners have conducted a *de novo* review of the record in accordance with Idaho Code § 72-1368(7). Spruell v. Allied Meadows Corp., 117 Idaho 277, 279, 787 P.2d 263, 265 (1990). The Commission has relied on the audio recording of the

hearing conducted by the Appeals Examiner on December 27, 2010, along with the Exhibits [1 through 5] admitted into the record during that proceeding.

NEW HEARING

Claimant submitted additional evidence for consideration on appeal. (Claimant's appeal.) The Commission is bound to review these matter based on the record as presented before the Appeals Examiner. Idaho Code § 72-1368(7). That code section also grants the Commission the authority to determine whether the interests of justice require that a party be permitted to introduce additional evidence. If so, "the commission may, in its sole discretion, conduct a hearing to receive additional evidence or may remand the matter back to the appeals examiner for an additional hearing and decision." Idaho Code § 72-1368(7). Rule 7(B) 5 of the Rules of Appellate Practice and Procedure ("RAPP"), 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 appeals examiner." A party's failure to address why the additional evidence was not admitted to the appeals examiner at the time of the hearing can bar the admittance of the evidence at the Commission level. Slaven v. Road to Recovery, 143 Idaho 483, 485, 148 P.3d 1229, 1231 (2006).

After reviewing the record, the Commission does not find that the interests of justice require a new hearing to admit the additional evidence in this matter. Claimant had ample opportunity to present evidence prior to this level of review. Claimant participated in the Appeals Examiner's hearing. There is no indication or allegation of improprieties that precluded Claimant from a full and fair opportunity to present evidence supporting her contentions about

the issues during the Appeals Examiner's hearing. Nor did Claimant explain why she failed to provide the additional evidence for the Appeals Examiner hearing.

Furthermore, Claimant could have requested that the Appeals Examiner re-open the hearing to admit the additional evidence. This procedure provides a means for admitting additional evidence that was not available for the original hearing. Information about this process was supplied to the parties in an informational document which accompanied the Notice of Telephone Hearing. (Exhibit 2, p. 2). However, there is nothing in the record to suggest that Claimant made such a request.

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. No such circumstances exist here. Therefore, there is no reason to conduct a new hearing. Claimant's request for a new hearing to augment the record with the additional evidence is DENIED. Pursuant to Idaho Code § 72-1368(7), the Commission will consider only the evidence in the record as established by the Appeals Examiner.

FINDINGS OF FACT

Based on the evidence in the record, the Commission sets forth the following Findings of Fact.

1. From April 21, 2008 through October 29, 2010, Claimant worked for Employer as the residence director of Sylvan House, one of Employer's assisted living facilities. Claimant heard a rumor that another one of Employer's facilities, Teton House, was closing. In a phone conversation with one of her supervisors, Matt Cable, the topic of the state of other houses in the region arose, and Claimant inquired into whether Mr. Cable heard the rumor that Teton House was closing. Mr. Cable replied no. Nothing further was said about the topic. (Audio Recording).
2. Mr. Cable informed his supervisor, Craig Boyes, of Claimant's statement regarding Teton House. Mr. Boyes called Claimant and asked Claimant from whom she had heard the rumor. Claimant refused to reveal the source. Later, on a conference call with Employer's Chief Executive Officer, Laurie Bebo, and Mr. Boyes, Claimant was again

asked from whom she had heard the rumor. Claimant responded that she had several sources and friends within the company and refused to reveal the source. Ms. Bebo informed Claimant that she had one more chance to reveal the source of the rumor. Claimant responded that she would not and Claimant was placed on suspension pending further investigation. Claimant was ultimately discharged for insubordination.

3. In the first four of the five calendar quarters preceding the one in which Claimant applied for benefits, Employer paid Claimant more wages than any other.

DISCUSSION

The facts in this matter are relatively undisputed. Claimant heard a rumor that Employer was planning to close one of its other assisted living facilities, Teton House. In talking with one of her supervisors, Claimant inquired if her supervisor had heard the rumor, to which he responded he had not. The discussion ended. Later that evening, Claimant received several calls in which Employer demanded Claimant tell Employer from whom she had heard the rumor. Claimant refused. Employer discharged Claimant for insubordination because she refused to disclose the source of her information. (Audio Recording; Exhibit 4, p. 5).

The parties do not dispute that Employer discharged Claimant. (Audio Recording; Exhibit 4, p. 5). Idaho Code § 72-1366(5) provides in part that a claimant is eligible for unemployment insurance benefits if that individual was discharged for reasons other than employment-related misconduct. The burden of proving misconduct by a preponderance of the evidence falls strictly on the employer. IDAPA 09.01.30.275.01 (2010); Appeals Examiner of Idaho Dept. of Labor v. J.R. Simplot Co., 131 Idaho 318, 320, 955 P.2d 1097, 1099 (1998). A “preponderance of the evidence” means that when weighing all of the evidence in the record, the evidence on which the finder of fact relies is more probably true than not. Edwards v. Independence Services, Inc., 140 Idaho 912, 915, 104 P.3d 954, 957 (2004). Where the burden is not met, benefits must be awarded to the claimant. Mussman v. Kootenai County, 150 Idaho 68, 244 P.3d 212, 216 (2010).

What constitutes “just cause” in the mind of an employer for dismissing an employee is not the legal equivalent of “misconduct” under Idaho’s Employment Security Law. Therefore, whether the employer had reasonable grounds according to the employer’s standards for dismissing a claimant is not controlling of the outcome in these cases. 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 Idaho Supreme Court has defined 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. Gunter v. Magic Valley Regional Medical Center, 143 Idaho 63, 137 P.3d 450 (2006). In addition, the Court requires the Commission to consider all three grounds in determining whether misconduct exists. Smith v. Zero Defects, Inc., 132 Idaho 881, 884, 980 P.2d 545, 548 (1999).

The Idaho Supreme Court has analyzed insubordination specifically under the “disregard of a standard-of-behavior” definition of misconduct. Folks v. Moscow School District #281, 129 Idaho 833, 933 P.2d 642 (1997). Under the standards of behavior test, the employer must prove by a preponderance of the evidence that the claimant’s conduct fell below the standard of behavior it expected and that the employer’s expectation was objectively reasonable under the particular circumstances. Harris v. Electrical Wholesale, 141 Idaho 1, 105 P.3d 267 (2004). Further, the employer must communicate expectations and duties that do not naturally flow from the employment relationship. Pimley v. Best Values, Inc., 132 Idaho 432, 974 P.2d 78 (1999). Notably, there is no requirement that the employer must demonstrate that the employee’s disregard of the employer’s preferred standard of behavior was subjectively

willful, intentional, or deliberate. Welch v. Cowles Publishing Co., 127 Idaho 361, 364, 900 P.2d 1372, 1375 (1995).

According to the Idaho Supreme Court, insubordination connotes a deliberate or willful refusal by an employee to obey a reasonable order or directive that an employer is authorized to give and entitled to have obeyed. Avery v. B.B. Rental Toilets, 97 Idaho 611, 614, 549 P.2d 270, 273 (1976). Therefore, the Commission must determine: 1) whether Employer's order to reveal Claimant's source of the information was reasonable, 2) whether Ms. Bebo was authorized to give that order and have it be obeyed by Claimant, and 3) whether Claimant deliberately or willfully refused to obey the order.

There is no dispute that Ms. Bebo, as the President and CEO of Employer, was Claimant's most senior supervisor and was authorized to give the order. Nor do the parties dispute that Claimant willfully refused to obey the order when it was explicitly asked. Rather, the crux of this matter lies in determining whether Employer's order was reasonable.

There are certainly some instances when requesting information from an employee is necessary and reasonable. However, after careful consideration, the Commission is not inclined to find Employer's directive reasonable in this case. Claimant testified that Employer wanted to know Claimant's source in order to put an end to the rumor. (Audio Recording). Employer did not contest this point. However, there is no evidence that Claimant revealing the source would allow Employer to put an end to the rumor. There is no indication that Claimant's source was the one to start the rumor or that others had not heard the rumor and it continued to spread. If Employer's objective was to put an end to a rumor that was already circulating, there were more viable options such as holding a meeting or distributing a memo. In other words, there is no indication that Employer's objective would be met unless Claimant

revealed her source.

Furthermore, Claimant's job duties revolved around Sylvan house. (Audio Recording). Providing the source of the information is not directly related to Claimant's job duties nor did it have any direct effect on those duties. Employer's concern over the rumors and its desire to stop any such rumors is understandable. However, considering Employer's objective and the relationship of the rumor to Claimant's job duties, we are not inclined to find that Employer's directive to provide the source was reasonable. Therefore, Employer cannot show that Claimant's conduct was insubordinate.

Even if Employer's directive was reasonable, this situation falls within an exception to misconduct IDAPA 09.01.30.275.03. According to that section "Mere inefficiency, unsatisfactory conduct, failure of good performance as the result of inability or incapacity, inadvertencies, isolated instances of ordinary negligence or good faith errors in judgment or discretion are not considered misconduct connected with employment." IDAPA 09.01.30.275.03. There is no indication that Claimant had a history of insubordination. Rather, Claimant failure to abide by Employer's directive appears to be an isolated instance. Further, there is little evidence that Claimant's failure to abide by Employer's directive directly caused harm. Nor is there any indication that Employer learning of the source would limit any alleged harm that may have occurred. Rather, the "cat was out of bag" in a sense. In some regards, Claimant providing this information to her supervisor may have helped Employer since she notified Employer of information that it had not yet heard. Claimant's decision to not reveal the source in order to protect the workers, but provide her supervisor with the concern constitutes a good faith error in judgment or discretion and is not considered misconduct connected with the employment.

It was certainly within Employer's discretion to discharge Claimant and it may very well

have been in its best interest to do so. However, based on the facts found in this record, the Commission finds that Employer did not establish misconduct and that Claimant's situation falls under an exception to misconduct. Claimant is eligible for benefits.

Chargeability

The Appeals Examiner also concluded that Employer's account was not chargeable for experience rating purposes. Pursuant to Idaho Code §72-1351(2)(a), an employer's experience rated account is chargeable for benefits paid to a claimant who is discharged for reasons other than misconduct connected with employment or quits with good cause connected with employment. In this case, Employer paid the most wages to Claimant during the last four base quarters. (Exhibit 5). Since it was concluded above that Claimant was discharged for reasons other than employment-related misconduct, Employer's account is chargeable for experience rating purposes.

CONCLUSIONS OF LAW

I

Employer discharged Claimant but not for misconduct in connection with employment.

II

Employer's account is chargeable for experience rating purposes.

ORDER

Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED. Employer discharged Claimant but not for misconduct in connection with employment. Employer's account is chargeable for experience rating purposes. This is a final order under Idaho Code § 72-1368(7).

DATED this 28th day of July 2011.

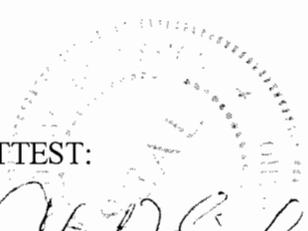
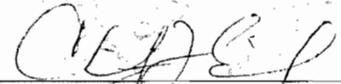
INDUSTRIAL COMMISSION


Thomas E. Limbaugh, Chairman


Thomas P. Baskin, Commissioner

R.D. Maynard, Commissioner

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

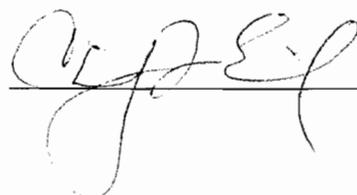
I hereby certify that on the 28th day of July 2011, a true and correct copy of Decision and Order was served by regular United States mail upon each of the following:

ASSISTED LIVING CONCEPTS INC.
C/O TALX UC EXPRESS
PO BOX 173860
DENVER CO. 80217-0860

BROOKE A. STARK
23505 E. MAXWELL CT.
LIBERTY LAKE WA 99019

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

JS



ORIGINAL

Nancy J. Garrett, ISB No. 4026
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
njg@moffatt.com

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INDUSTRIAL COMMISSION

Attorneys for Employer/Appellant
Assisted Living Concepts, Inc.

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BROOKE A. STARK,
SSN: [REDACTED]

Claimant/Respondent,

vs.

ASSISTED LIVING CONCEPTS, INC.,

Employer/Appellant,

and

IDAHO DEPARTMENT OF LABOR,

IDOL # 1283-2011

NOTICE OF APPEAL

TO: THE ABOVE NAMED CLAIMANT/RESPONDENT, BROOKE A. STARK;
THE IDAHO DEPARTMENT OF LABOR, AND ITS ATTORNEY, DEPUTY
ATTORNEY GENERAL; AND THE CLERK OF THE INDUSTRIAL
COMMISSION, STATE OF IDAHO.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named employer/appellant, Assisted Living Concepts, Inc., appeals against the above-named claimant/respondent, Brooke A. Stark, to the Idaho Supreme Court from the Idaho Industrial Commission's Decision and Order entered in the above-entitled action on February 28, 2011, Idaho Industrial Commission Chairman Thomas E. Limbaugh, presiding.

2. Appellant, Assisted Living Concepts, Inc., has a right to appeal to the Idaho Supreme Court, and the Industrial Commission's Decision and Order described in paragraph 1 above is an appealable order under and pursuant to Rules 4 and 11(d), I.A.R. This appeal is taken upon matters of law and upon matters of fact.

3. A preliminary statement of the issues on appeal, which appellant Assisted Living Concepts, Inc. intends to assert on appeal is as follows:

- a. Findings in the Decision and Order are not supporting by substantial competent evidence.
- b. The Idaho Industrial Commission's determination that the employee's behavior did not constitute misconduct in connection with employment is not supported by substantial and competent evidence.
- c. The Idaho Industrial Commission's determination that the employee's behavior did not constitute insubordination is not supported by substantial and competent evidence.
- d. The Idaho Industrial Commission's determination that the employer's order or directive that the employee refused to obey

was not a reasonable order or directive is not supported by substantial and competent evidence.

- e. The Idaho Industrial Commission's decision is contrary to the legal requirement that claimant prove by a preponderance of evidence each and every element of her claim.
- f. The Idaho Industrial Commission's application of IDAPA 09.01.30.275.03 is not supported by substantial

However, the foregoing statement or list of issues on appeal shall not prevent the appellant from asserting other issues on appeal.

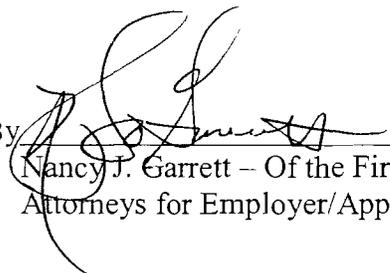
- 4. No order has been entered sealing all or any portion of the record.
- 5. The appellant requests the preparation of the reporter's standard transcript as defined in Rule 28, I.A.R., in both hard copy and electronic format.
- 6. The appellant does not request that any additional documents be included in the agency's record in addition to those automatically included under Rule 28, I.A.R.
- 7. I certify:
 - a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Name and address: Clerk of Idaho Industrial Commission 700 S. Clearwater Lane, Boise, Idaho 83712
 - b. That the clerk of the administrative agency has previously been paid the estimated fee for preparation of the reporter's transcript.

- c. That the estimated fee for preparation of the agency's record has been paid.
- d. That the appellant's filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R., and the Attorney General of the State of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED this 11th day of April, 2011.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 

Nancy J. Garrett – Of the Firm
Attorneys for Employer/Appellant

CERTIFICATE OF SERVICE

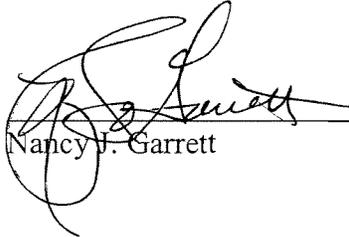
I HEREBY CERTIFY that on this 11th day of April, 2011, I caused a true and correct copy of the foregoing **NOTICE OF APPEAL** to be served by the method indicated below, and addressed to the following:

Brooke A. Stark
23505 E. MAXWELL CT.
Liberty Lake, WA 99019

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Deputy Attorney General
Idaho Department of Labor
State House Mail
317 W. Main Street
Boise, ID 83735

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Nancy J. Garrett

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BROOKE A. STARK,
)
)
Claimant/Respondent,)
)
vs.)
)
ASSISTED LIVING CONCEPTS,)
)
Employer/Appellant,)
)
and)
)
IDAHO DEPARTMENT OF LABOR,)
)
Respondent.)
)

SUPREME COURT # 38715

CERTIFICATE OF APPEAL
OF EMPLOYER ASSISTED LIVING
CONCEPTS

2011 APR 15 A 8:47
IDAHO DEPARTMENT OF LABOR

Appeal From: Industrial Commission Chairman Thomas E. Limbaugh,
presiding

Case Number: IDOL # 1283-2011

Order Appealed from: DECISION AND ORDER FILED FEBRUARY 28, 2011

Representative for Claimant: BROOKE A. STARK
23505 E. Maxwell Ct.
Liberty Lake, WA 99019

Representative for Employers: NANCY J. GARRETT
Moffatt, Thomas, Barrett, Rock and Fields, Chtd.
101 S. Capitol Blvd., 10th Floor
P.O. Box 829
Boise, ID 83701

Representative for IDOL: TRACEY K. ROLFSEN,
Deputy Attorney General
317 W. Main Street
Boise ID 83735

CERTIFICATE OF APPEAL (Stark, S.C. # 38715) - 1

FILED - ORIGINAL
APR 15 2011
Supreme Court Court of Appeals
Entered on ATS by DB

35

Appealed By: ASSISTED LIVING CONCEPTS, INC., Employer/Appellant

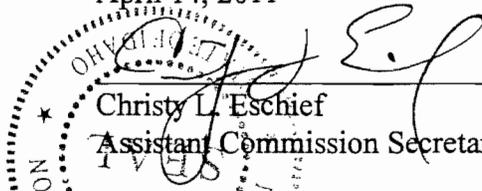
Appealed Against: BROOK A. STARK, Claimant/Respondent

Notice of Appeal Filed: April 11, 2011

Appellate Fee Paid: \$86.00 to Supreme Court and
\$50.00 to Industrial Commission
Checks were received.

Transcript: Transcript will be ordered

Dated: April 14, 2011



Christy L. Eschief
Assistant Commission Secretary



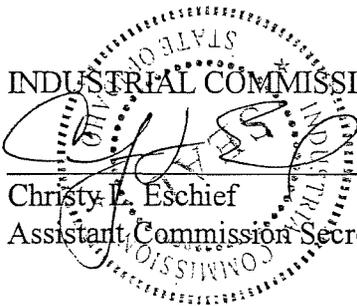
CERTIFICATION

I, Christy L. Eschief, 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 April 11, 2011; Decision and Order, filed February 28, 2011; and the whole thereof, Docket Number 1283-2011 for Brooke A. Stark.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 14th day of April, 2011.

INDUSTRIAL COMMISSION


Christy L. Eschief
Assistant Commission Secretary



CERTIFICATION OF RECORD

I, Gina Espinosa, 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 16th day of May, 2011.


Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BROOKE A. STARK,)
)
 Claimant/Respondent,)
)
 vs.)
)
 ASSISTED LIVING CONCEPTS,)
)
 Employer/Appellant,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR.)
)
 Respondent,)
)
 _____)

SUPREME COURT NO# 38715
NOTICE OF COMPLETION

TO: STEPHEN W. KENYON, Clerk of the Courts; and
Brooke A. Stark Claimant/Respondent, and
Nancy J. Garrett 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/Appellant

Brooke A. Stark
23505 E. Maxwell Ct.
Liberty Lake, WA 99019

For Employer/Respondent

Nancy J. Garrett
PO Box 829
Boise, ID 83701

For Respondent

Tracey K. Rolfsen
Deputy Attorney General
Idaho Department of Labor
317 W. Main St.
Boise, Idaho 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, including requests for corrections, additions or deletions. In the event no objections to the Agency's Record are filed within the twenty-eight day period, the Agency's Record shall be deemed settled.

DATED this 16th day of May, 2011.


Assistant Commission Secretary

