10-5-2012

Bringman v. New Albertsons Clerk's Record v. 1 Dckt. 40232

Vol. 1 of 1

LAW CLERK

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN, Claimant/Appellant, v. NEW ALBERTSONS, INC., Employer/Respondent, and IDAHO DEPARTMENT OF LABOR/Respondent.	**SUPREME COURT NO. 40232** **AGENCY RECORD**

BEFORE THE INDUSTRIAL COMMISSION
STATE OF IDAHO

FOR CLAIMANT/APPELLANT

TOM C. ARKOOSH
250 N 10TH STREET, 4TH FLOOR
PO BOX 2598
BOISE ID 83701-2598

FOR RESPONDENT

TRACEY K. ROLFSEN
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
219 W. MAIN ST.
BOISE, ID 83735-0030

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN, Claimant/Appellant, v. NEW ALBERTSONS, INC., Employer/Respondent, and IDAHO DEPARTMENT OF LABOR/Respondent.	**SUPREME COURT NO. 40232** **AGENCY RECORD**

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

BILLY J BRINGMAN,
SSN: [redacted]
Claimant
vs.

NEW ALBERTSONS INC,
Employer
and

IDAHO DEPARTMENT OF LABOR

DOCKET NUMBER 2865-2012

DECISION OF APPEALS EXAMINER

DECISION

Benefits are **DENIED** effective December 5, 2010.

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

The Eligibility Determination dated February 8, 2012, which concluded that the claimant quit his job without good cause connected with the employment, is hereby **AFFIRMED**.

Benefits are **DENIED** effective December 5, 2010 through December 3, 2011, and effective December 11, 2011 through January 14, 2012. The claimant is also **NOT ELIGIBLE** for benefits effective February 5, 2012 through February 2, 2013.

The Eligibility Determination dated February 8, 2012, which concluded that the claimant willfully made a false statement or failed to report a material fact on his claim, is hereby **AFFIRMED**.

Waiver of the requirement that the claimant repay benefits owed to the Employment Security Fund is **NOT GRANTED**.

HISTORY OF THE CASE

The above-entitled matter was heard by Thomas J. Holden, Appeals Examiner for the Idaho Department of Labor, on March 12, 2012, by telephone in the City of Boise, in accordance with §72-1368(6) of the Idaho Employment Security Law.

The claimant, Billy Bringman, participated in the hearing and was represented by C. Tom Arkoosh.

The employer, New Albertsons Inc., was represented in the hearing by Frank Eckert. Shane Wright participated in the hearing as a witness for the employer.

The respondent, the Idaho Department of Labor, was represented in the hearing by Elaine Mattson.

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, 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, whether the claimant willfully made a false statement or representation or willfully failed to report a material fact in order to obtain unemployment insurance benefits, according to §72-1366(12) of the Idaho Employment Security Law, and whether the claimant has received benefits to which s/he was not entitled, and if so, whether the requirement to repay benefits owed to the Employment Security Fund may be waived, according to §72-1369(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 as an assistant store director for Albertsons from May 12, 2004, through December 4, 2010.

2. The employer received a complaint that the claimant provided poor customer service. The claimant refused to accept a check from a regular customer.

3. On October 26, 2010, the employer gave the claimant a write-up over the incident. The claimant refused to sign the write-up because he believed that the write-up would be used against him in the future. The employer sent the claimant home.

4. When the claimant returned to work several weeks later, the claimant met with the vice president of human relations, Shane Wright. Mr. Wright informed the claimant that he could either resign and accept a severance package, or he would be demoted and transferred to another store.

5. The claimant chose to resign and accept the severance package.

6. The claimant reported to the Department of Labor that the reason for his separation was due to laid off/lack of work.

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.

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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 the claimant voluntarily quit without good cause connected with employment or was discharged for misconduct in connection with employment.

If an employee voluntarily quits employment, the burden is on the employee to prove that it was for good cause. Pyeatt vs. Idaho State Univ., 98 Idaho 424, 565 P.2d 1381 (1977). The Idaho Supreme Court adopted the definition of "good cause" in Burroughs vs. Employment Sec. Agency, 86 Idaho 412, 387 P.2d 473 (1963):

> In order to constitute good cause, the circumstances which compel the decision to leave employment must be real, not imaginary, substantial, not trifling, and 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 woman and not to the supersensitive.

Ibid at p. 414. Thus, purely personal reasons are not "good cause" for quitting a job. Moreover, when an employee has viable options available to him or her, voluntary termination without exploring those options does not constitute good cause for obtaining unemployment compensation. Ellis vs. Northwest Fruit & Produce, Inc., 103 Idaho 821, 654 P.2d 914 (1982). This requirement stems from the policy of the law to encourage employers and employees to adjust their differences and avoid interrupting employment. Hart vs. Deary High School, 126 Idaho 550, 552, 887 P.2d 1057, 1059 (1994) 550, 553 887 P.2d 1057, 1060.

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(12) of the Idaho Employment Security Law provides that a claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact.

"Willfully" implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done in that it does not necessarily imply an evil mind, but is more nearly synonymous with "intentionally," "designedly," and therefore not accidental. Meyer vs. Skyline Mobile Homes, 99 Idaho 77, 589 P.2d 89 (1979).

A finding that a benefit claimant knew or thought it highly probable that he or she did not know what information a question solicited but nevertheless deliberately chose to respond without pursuing clarification would ordinarily support a conclusion of willful falsehood or concealment. Meyer vs. Skyline Mobile Homes, 99 Idaho 77, 589 P.2d 89 (1979).

Section 72-1369(5)(a) of the Idaho Employment Security Law provides: (5) The director may waive the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, and interest thereon, if: (a) the benefit payments were made solely as a result of department error or inadvertence and made to a claimant who could not reasonably have been expected to recognize the error.

In order for repayment of an erroneously paid benefit to be waived, the claimant must show:

(1) that such payments were not the result of a false statement, misrepresentation or concealment of a material fact by the claimant
(2) that such payments were made solely as a result of department error or inadvertence; and,
(3) that such payments were made to a claimant who had no way of knowing that he [or she] was receiving benefits to which he [or she] was not entitled. Blayney vs. City of Boise, 110 Idaho 302, 307, 715 P.2d 972, 977 (1986)

CONCLUSIONS

The claimant quit his job after the claimant was given a write-up that he disagreed with. The claimant could have continued in his position by signing the write-up. While the claimant may have disagreed with the write-up, it has not been established that the employer's request was so unreasonable or burdensome that the claimant's most prudent recourse was to quit his job. The claimant did not quit his job with good cause connected with the employment. Therefore, the claimant is ineligible for unemployment insurance benefits, and the employer's account is not chargeable on the claim.

The claimant reported to the Department of Labor that the reason for his separation from Albertsons was due to laid off/lack of work. There have been no facts presented which would support a conclusion that the claimant was laid off or that there was a lack of work. The claimant has not provided a reasonable explanation for failing to provide accurate information to the Department of Labor. It must be concluded that the claimant willfully made false statements or representations or willfully failed to report material facts in order to obtain unemployment insurance benefits. Therefore, the claimant is ineligible for benefits, and the claimant does not meet the criteria for a waiver of the requirement that the claimant repay benefits owed to the Employment Security Fund.

Thomas J. Holden
Appeals Examiner

Date of Mailing March 23, 2012 **Last Day To Appeal** April 6, 2012

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.

E

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 March 23, 2012, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

BILLY J BRINGMAN
10618 W PATTIE ST.
BOISE ID 83713

NEW ALBERTSONS INC/ TALX UC EXPRESS
P O BOX 173860
DENVER CO 80217-3860

IDAHO DEPARTMENT OF LABOR-BOISE
CLAIMS DIVISION ATTN: OFFICE MANAGER
219 W MAIN ST
BOISE ID 83735-0030

CAPITOL LAW GROUP PLLC
ATTN: C. TOM ARKOOSH
P O BOX 2598
BOISE ID 83701-2598

R. Pardue

C. Tom Arkoosh, ISB # 2253
CAPITOL LAW GROUP, PLLC
250 North 10th Street, 4th Floor
P.O. Box 2598
Boise, Idaho 83701-2598
Telephone: (208) 424-8872
Facsimile: (208) 424-8874

Attorney for Billy J. Bringman

APPEALS BUREAU

IDAHO DEPARTMENT OF LABOR

BILLY J. BRINGMAN,
SSN [redacted]

Claimant,

vs.

NEW ALBERTSONS INC.,

Employer

and

IDAHO DEPARTMENT OF LABOR

Docket No. 2865-2012

NOTICE OF APPEAL OF APPEALS EXAMINER DECISION

COMES NOW, Claimant, Billy J. Bringman, by and through his counsel of record, Capitol Law Group, PLLC, and hereby files a Notice of Appeal in reference to the Decision of Appeals Examiner filed on March 23, 2012. Claimant requests an agency record be prepared by the agency, and the Commission consider written briefing thereon.

ORAL ARGUMENT IS REQUESTED.

7

DATED this 5 day of April, 2012.

CAPITOL LAW GROUP, PLLC

By: _____
C. Tom Arkoosh, Of the Firm
Attorneys for Billy J. Bringman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of April, 2012, I served a true and correct copy of the foregoing document on the person(s) listed below, in the manner indicated:

Idaho Department of Labor	_____	U.S. Mail, postage prepaid
Appeals Bureau	_____	Overnight Courier
317 W. Main St.	_____	Hand Delivered
Boise, ID 83735	✓	Facsimile 332-7558

_____
C. Tom Arkoosh

IDAHO INDUSTRIAL COMMISSION

PO Box 83720
Boise, ID 83720-0041
(208) 334-6000 - FAX (208) 334-2321
1-800-950-2110

April 10, 2012

New Albertsons, Inc.
C/O TALX UC Express
PO Box 173860
Denver, CO 80217-3860

RE: Billy J. Bringman v. New Albertsons, Inc.
SS # [redacted]
IDOL # 2865-2012

Dear Talx UC Express Representative:

The Idaho Industrial Commission received an appeal in the above entitled unemployment insurance case. According to the Idaho Department of Labor Appeals Examiner's Decision, you represented the employer in this matter prior to this appeal.

Pursuant to Idaho Code § 72-1323, Rule 4 of the Rules of Appellate Practice and Procedure under the Idaho Employment Security Law, effective as amended March 1, 2009, and Idaho Supreme Court case law (White v. Idaho Forest Industries, 98 Idaho 784, 572 P.2d 887 (1977); Kyle v. Beco Corp., 109 Idaho 267, 707 P.2d 378 (1985)), the Idaho Industrial Commission cannot allow third-party, non-attorney representation of an employer in these matters. Consequently, you will not be served with any additional information related to this appeal.

The Commission does not have a current mailing address for the employer. Please inform your client that if they want to receive documentation related to this appeal or otherwise participate in the appeal process, they must provide the Commission with their mailing address, in writing, or appear before the Commission through an attorney licensed to practice law in the state of Idaho.

Sincerely,

Jessica Solis
Assistant Commission Secretary

cc:

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

CAPITOL LAW GROUP PLLC
ATTN: C TOM ARKOOSH
PO BOX 2598
BOISE, IDAHO 83701-2598

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILL[redacted], SSN: [redacted] Claimant,	IDOL 2865-2012
v.	
NEW ALBERTSONS, INC., Employer,	NOTICE OF FILING OF APPEAL
and	FILED APR 10 2012 INDUSTRIAL COMMISSION
IDAHO DEPARTMENT OF LABOR.	

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

(B)

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2012 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 AND DISC:

CAPITOL LAW GROUP PLLC
ATTN: C TOM ARKOOSH
PO BOX 2598
BOISE, IDAHO 83701-2598

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

aas

Jessica A Soles
Assistant Commission Secretary

(11)

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CRAIG G. BLEDSOE – ISB# 3431
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. 3148

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILLY J. BRINGMAN, Claimant, vs. NEW ALBERTSONS, INC., Employer, and IDAHO DEPARTMENT OF LABOR.	)	IDOL NO. 2865-2012 NOTICE OF APPEARANCE

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.

12

DATED this 13th day of April, 2012.

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 13th day of April, 2012, to:

C TOM ARKOOSH
PO BOX 2598
BOISE ID 83701

NEW ALBERTSONS INC
C/O TALX UC EXPRESS
PO BOX 173860
DENVER CO 80217-3860

Kenna Andrus

13

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILLY J. BRINGMAN,
Claimant,

vs.

NEW ALBERTSONS, INC.,
Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 2865-2012

ORDER DENYING NEW HEARING;

ORDER ESTABLISHING BRIEFING SCHEDULE

Claimant, Billy J. Bringman, through counsel, appealed a Decision issued by an Idaho Department of Labor ("IDOL") Appeals Examiner finding: 1) Claimant voluntarily quit his job without good cause connected with the employment, 2) Employer's account is not chargeable for experience rating purposes, 3) Claimant willfully made a false statement or failed to report a material fact in order to obtain; and 4) Claimant was not entitled to a waiver of the requirement that he repay benefits owed to the Employment Security Fund. Claimant requests a new hearing to provide oral argument as well as the opportunity to submit a brief in this matter. (Claimant's appeal, filed April 5, 2012).

New Hearing to Submit Oral Argument

Idaho Code § 72-1368(7) grants the Commission authority to "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" if the interests of justice so require. The Idaho Supreme Court has consistently upheld that it is within the Commission's sole discretion to determine whether to consider additional evidence and that 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). According to Rule 7(B) of the Rules of

(14).

Appellate Practice and Procedure under the Idaho Employment Security Law ("R.A.P.P."), effective as amended, January 1, 2012, a party requesting to offer additional evidence shall submit, among other requirements, the "reason for requesting a hearing." A party seeking to provide oral argument based on the record as it stands 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 other forums.

Claimant requests a new hearing in order to submit oral argument. (Claimant's request). Upon review, the Commission finds it is unnecessary to delay this matter further to hold a hearing for oral argument. Claimant received ample opportunity to present argument in this matter. Prior to the hearing, the Appeals Bureau advised both parties of the issue and the importance of presenting all relevant evidence to the Appeals Examiner. (Exhibits 1 & 2). Claimant was represented by counsel at the hearing and received a full and fair opportunity to present its case to the Appeals Examiner. The record is this matter is sufficient. Furthermore, Claimant did not set forth any reason for his request as is required by the R.A.P.P. Without argument from Claimant, the Commission is without a basis with which to determine whether a new hearing is warranted.

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. Claimant received adequate due process and ample opportunity to present his case in this matter. Claimant's request for a new hearing to provide oral argument is DENIED.

BRIEFING SCHEDULE

In lieu of an opportunity for a new hearing, the Commission grants Claimant's request to submit a brief pursuant to Rule 5(A) of the R.A.P.P. The parties may prepare written argument

(15)

based on the evidentiary record as it stands. Any inclusion of, or comment on, additional evidence in a brief will not be considered by the Commission. All briefs must comply with the R.A.P.P., a copy of which the Commission supplied to the interested parties with the Notice of Appeal.

The Commission establishes the following briefing schedule:

Claimant's brief will be due ten (10) days from the date of this Order.

Employer, through counsel, and the Idaho Department of Labor may reply within seven (7) days of the receipt of Claimant's brief, if they so choose.

DATED this 20th day of April, 2012.

INDUSTRIAL COMMISSION

Rebecca J. Ophus, Referee

ATTEST:

Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of April, 2012, a true and correct copy of **Order Denying New Hearing; Order Establishing Briefing Schedule** was served by regular United States mail upon each of the following:

CAPITOL LAW GROUP PLLC
ATTN: C TOM ARKOOSH
PO BOX 2598
BOISE, IDAHO 83701-2598

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

JS

(90)

Capitol Law Group, PLLC

C. Thomas Arkoosh
www.capitollawgroup.com • tarkoosh@capitollawgroup.com

April 30, 2012

VIA FACSIMILE 332-7558
Thomas J. Holden, Appeals Examiner
Idaho Industrial Commission
Judicial Division, IDOL Appeals
P.O. Box 83720
Boise, Idaho 83720-0041

Re: *Bringman v. Albertson and IDOL*
Docket No: 2865-2012
CLG File No. 6413.000

Dear Mr. Holden:

This office received from the Department of Labor's Appeals Examiner, an audio recording of the hearing. Because, to my knowledge, there is no written transcript, I have cited to points in time in the audio transcript in the Memorandum filed herewith.

If there is any question regarding these citations, please contact my office using the information in the above letterhead.

Sincerely,

Capitol Law Group, PLLC

C. Thomas Arkoosh

CTA:lbt
Enclosures

C. Tom Arkoosh, ISB # 2253
CAPITOL LAW GROUP, PLLC
250 North 10th Street, 4th Floor
P.O. Box 2598
Boise, Idaho 83701-2598
Telephone: (208) 424-8872
Facsimile: (208) 424-8874

Attorney for Billy J. Bringman

APPEALS BUREAU

IDAHO DEPARTMENT OF LABOR

BILLY J. BRINGMAN,
SSN [redacted]

Claimant,

vs.

NEW ALBERTSONS INC.,

Employer

and

IDAHO DEPARTMENT OF LABOR

Docket No. 2865-2012

MEMORANDUM IN SUPPORT OF NOTICE OF APPEAL

This Memorandum in Support of Notice of Appeal is filed on behalf of Billy J. Bringman ("Bringman") in support of his Notice of Appeal filed April 5, 2012.

PROCEDURAL AND FACTUAL BACKGROUND

1. Bringman worked for Albertsons from 2004, not long after his return from active combat duty in Iraq, until November 11, 2010.

2. Albertsons check policy requires that store employees see customer identification prior to accepting checks from customers as payment for purchases at the store. On October 5,

2011, a customer tried to purchase groceries from the Albertsons store at which Bringman worked without identification. Pursuant to Albertsons policy, Bringman did not accept the customer's check without identification.

3. On October 26, 2010, an Albertsons store director issued Bringman a written warning for poor performance and poor leadership skills relating to the customer check issue. Because Bringman followed company policy in not accepting the check, Bringman refused to sign the warning. Following his refusal to sign the warning, the store director sent Bringman home until further notice.

4. After three weeks away from work pursuant to the store director's instruction, Albertsons called Bringman to a meeting with Shane Wright, Vice President of Albertsons ("Wright"). At that meeting, Wright presented Bringman with two options. First, Bringman could resign and accept a severance package and Albertsons would not contest any filing for unemployment benefits. Alternatively, Wright told Bringman he could stay with the company, but that Albertsons's would transfer him, demote him from his title of Assistant Store Director to a subordinate title, and pay him $13.50 per hour, approximately $20,000 less than he was paid prior to his mandatory leave, and approximately half of his salary of $46,000 prior to leave. Bringman accepted the severance package.

5. On December 5, 2010, Bringman filed with the Idaho Department of Labor ("the Department") for unemployment benefits and began receiving benefits thereafter until December 5, 2011. The Department's online application for unemployment benefits offers three choices to describe an applicant's termination: 1) Quit, 2) Terminated, or 3) Laid-off due to lack of work. The application sets forth no option for constructive discharge. On both his December 2010

application and his December 2011 reapplication for unemployment benefits, Bringman selected "laid-off due to lack of work" as his cause of termination.

6. Albertsons did not respond or object to Bringman's first application for unemployment benefits.

7. The Department responded to Bringman's December 2011 reapplication with two Determinations of Overpayment ("Determinations"), stating that Bringman "did not provide accurate separation information in an attempt to obtain benefits to which he was not entitled" and quit his position without exploring the options that were available to him.

8. Bringman appealed the Department's Determinations, and on March 12, 2012, a hearing was held in front of the Department's Appeals Examiner ("Examiner").

9. At the hearing, Wright testified that Albertsons terminated Bringman due to problems with Bringman's performance, following the write-up, that were reported to Wright on a "phone call [he] received from the store director Audrey and the district manager Tim Johnson", further asserting that Bringman's termination had nothing to do with the write-up following the check incident, but, rather, "continuing problems and issues that had happened...." Audio Recording at 57:10. Wright went on to testify that Bringman, following the write-up, "...had made it worse in the store." Audio Recording at 57:26. During further testimony, Wright agreed that the write-up was titled "Last and Final Warning". Further, when asked whether Bringman returned to the store following that write-up, Wright answered that Bringman had returned to the store, but that he did not have personal knowledge of this fact and would not "get into details as to why [he] didn't have that information in front of [him]". Audio Recording at 59:29. Bringman testified that he, in fact, did not return to work following the write-up. No corporate records were produced as direct evidence to conflict with Bringman's testimony.

10. At that hearing, Elaine Mattson of the Idaho Department of Labor ("Mattson") questioned Bringman regarding whether "there was work available" and whether he was "laid off for lack of work". Audio Recording at 1:10:52. Bringman answered that he had been told his only option besides severance was to accept a position with inferior duties to the one he held and that offered compensation of approximately half of what he earned at the time of the write-up. Mattson asked Bringman, then, whether there was any other work he could do for Albertsons. Bringman responded that by her definition of "any work" there was some other work available. The Examiner declined to include in his Findings of Fact any details regarding the employment offered to Mr. Bringman.

11. At the hearing, Bringman testified that he left his employment for good cause. Mattson agreed in her testimony that "left his employment voluntarily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment" is the language of the statute applicable to claimant eligibility for unemployment compensation. However, when claimant's counsel C. Tom Arkoosh ("Arkoosh") questioned Ms. Mattson regarding whether there was a prohibition keeping the Department from using the language of the statute in the online questionnaire, Mattson answered that there was not. When Arkoosh asked whether using the language of the statute might make the questionnaire clearer, Mattson answered, "No. That's why we do the fact finding...." Audio Recording at 1:14:25. However, immediately following this statement, Mattson acknowledged that, contrary to her statement immediately prior, there is no "fact-finding drop-down" in the screen immediately following this questionnaire. Audio Recording at 1:14:28. In response to further questioning, Mattson then asserted that, although the fact finding she had described did not take place, that this problem could not have been resolved by the questionnaire because, "Laid off due to lack of

work is exactly what it means – laid off due to lack of work. You don't need to explain laid off due to lack of work." Audio Recording at 1:14:47. Denying the lack of clarity in the questionnaire that led to the hearing, Mattson asserted that "...we're having a discussion about whether or not the claimant voluntarily quit his job...." Audio Recording at 1:15:05. Mattson offered no explanation as to why clearer statutory language is not used in the questionnaire.

12. In her testimony, Mattson repeatedly referred to Bringman's "separation", a term used in neither the applicable statute nor the online questionnaire but that, in addition to "quit", "terminated" and "laid off" makes four different possible descriptions for an employee's leaving his employment. In her testimony, Mattson stated that Bringman should have chosen "a choice with a separation", however, when asked if there was an option representing "a choice with a separation" in the online questionnaire, she states that, in order to choose such an option for separation, Bringman would have had to select "quit" or "terminated". Audio Recording at 1:02:43. Mattson offered no explanation, however, for how a claimant should make the connection between "separation" and "quit" or "terminated". Following up on her assertion regarding "separation", Mattson stated that, "Bottom line for the Department is that, whether [Bringman] quit or was fired, it doesn't matter, it's splitting hairs. There was a separation." Auido Recording at 1:03:39.

13. When, in further inquiring as to ways to make the questionnaire clearer, Arkoosh asked if the state agreed or disagreed that it should supply a line item for "termination without cause", Mattson answered "disagree". Audio Recording at 1:17:07. When, following that response, Arkoosh asked Mattson whether "if a person feels that they had to quit for abuse, say, or sexual harassment, they're supposed to put quit?" Mattson responded "That is correct." Audio Recording at 1:17:20.

14. In the findings of fact, the appeals examiner states that

> "On October 26, 2012, the employer gave the claimant a write-up over the incident. The claimant refused to sign the write-up because he believed that the write-up would be used against him in the future."

The Examiner's conclusion directly contradicts Bringman's testimony, in which he stated that he refused to sign the write-up because "I would have been signing a document saying I had done something wrong, when in actuality I was following company policies and procedures...." Audio Recording at 14:15. Bringman's testimony goes on to describe the contrast between the write-up and the Albertsons policy statement.

15. The Examiner concluded that "There have been no facts presented which would support a conclusion that the claimant was laid off or that there was a lack of work."

APPLICABLE LAW

An employer constructively discharges an employee when the employer makes working conditions unendurable, resulting in the employee's reasonable decision to resign. *Waterman v. Nationwide Mut. Ins. Co.*, 201 P.3d 640, 645 (Idaho 2009).

A claimant has good cause to voluntary leave his employment where

> "the circumstances which compel the decision to leave employment [are] real, not imaginary, substantial, not trifling, and reasonable, not whimsical; there must be some compulsion produced by extraneous and necessitous circumstances, and the standard of what constitutes good cause is the standard of reasonableness as applied to the average man or woman."

Jensen v. Siemsen, 118 Idaho 1, 4, 794 P.2d 271, 274 (1990).

Idaho Code § 72-1366 sets forth the requirements an applicant must meet in order to be eligible for unemployment compensation. In particular, I.C § 72-1366(5) allows a claimant to receive compensation where

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> "The claimant's unemployment is not due to the fact that he left his employment voluntarily without good cause connected with his employment, or that he was discharged for misconduct in connection with his employment."

A finding that a benefit claimant knew or thought it highly probable that he or she did not know what information a question solicited but nevertheless deliberately chose to respond without pursuing clarification would ordinarily support a conclusion of willful falsehood or concealment. *See Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 589 P.2d 89 (1979).

A claimant acts willfully if he or she "purposely, intentionally, consciously, or knowingly fails to report material facts." *Id.* at 96-97. Willful implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law...." *Current v. Haddons Fencing, Inc.*, 152 Idaho 10, 13-14, 266 P.3d 485, 488-89 (2011). However, willfulness does not include accidental omissions due to "negligence, misunderstanding or other cause." *Id.*

Idaho Code § 72-1366(12) states "A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits."

ARGUMENT

I. Albertsons Constructively Discharged Bringman.

16. An employer constructively discharges an employee when the employer makes working conditions unendurable, resulting in the employee's reasonable decision to resign. *Waterman*, 201 P.3d at 645. Albertsons asked Bringman to sign a document by which it asked him to falsely admit to disobeying company policy. In Conclusions, the Examiner begins his analysis by writing, "The claimant quit his job after the claimant was given a write-up that he disagreed with." However, the write-up Albertsons gave Bringman states that Bringman

"fail[ed] to follow division standards, policies and practices...." See "Exhibit A" to Bringman's "Appeal of Determination (False Statement)". However, when Bringman refused to accept the disgruntled customer's personal check he did so in accordance with the company policy in effect at that time, which ordered store employees to "Verify ID on all personal check system prompts...". *Id.* The Examiner is correct in stating that Bringman disagreed with the write-up, but failed to take that reasoning to its logical end, which is that the write-up was factually incorrect and signing it would have been the equivalent for Bringman of betraying his personal integrity.

17. When Bringman declined to sign the document containing the misrepresentations regarding store policy and his actions, Albertsons ordered Bringman not to come to work for approximately three weeks beginning in October 2010. Because he did not hear from Albertsons during this period, Bringman had to contact Albertsons numerous times to inquire regarding the status of his employment. Each time Bringman contacted Albertsons, Albertsons informed him that it was still contemplating the situation. Thereafter, Albertsons gave Bringman the choice to resign or take a substantial cut in pay, approximately half of his salary, and move to another store location. By threatening to demote Bringman for his refusal to sign a false document, Albertsons forced Bringman to resign from his employment and thereby constructively discharged him.

18. Therefore, the Examiner's next conclusion is also incorrect. While the Examiner concludes that "it has not been established that the employer's request was so unreasonable or burdensome that the claimant's most prudent recourse was to quit his job", Albertsons ordered Bringman to take mandatory leave after he refused to affirm Albertsons lie. To ask a combat veteran whose career has been built on the foundation of his personal integrity and ability to follow orders to lie and then to punish him when he refuses to do so is sufficiently outrageous to

cause such a veteran to leave his employment. Contrary to the Department's statement in its Determination, Bringman had no "viable" options available to him because no reasonable person would willingly take a substantial cut in pay in exchange for being forced to sign a false document.

19. In her hearing testimony, Mattson represented that so long as any other work is available, a claimant has not been discharged. This is not an accurate statement of the law of constructive discharge. While Albertsons offered Bringman other work, the work it offered was significantly less desirable than the work he was doing, and was offered in exchange for far less pay. While Mr. Bringman earned approximately $46,000 at his position prior to the write-up, Albertsons offered him only $13.50 per hour, approximately half that amount, following the write-up. While Mattson is correct that there was work available at Albertsons, asking Bringman to lie by signing a false write-up and then demoting him made his working conditions unendurable, resulting in his reasonable decision to leave Albertsons employ. While the Examiner inexplicably concluded that "There have been no facts presented which would support a conclusion that the claimant was laid off or that there was a lack of work", throughout the hearing Bringman testified to Albertsons informing him that it had no more of his work available to him, at one point testifying that Wright informed him that the "only available position is this position that [they offered him]" Audio Recording at 28:19 (emphasis added). While, in his situation, "laid off" was constructive discharge, or, in the lexicon of the statute, leaving for "good cause", "laid off" is not in the statute, and there was neither an option for "good cause" nor constructive discharge in the online questionnaire.

II. Bringman Truthfully and in Good Faith Reported to the Department All Material Facts with Regard to His Unemployment Insurance Claim.

20. Idaho Code Section 72-1366(12) states that a claimant is not entitled to unemployment benefits where that claimant willfully makes a false statement or willfully fails to report a material fact in order to obtain benefits. A claimant has a duty to pursue clarification where the claimant knows or finds it highly probable that he or she does not know what information a question solicits. *Meyer*, 589 P.2d at 97.

21. Following his constructive discharge from Albertsons, Bringman applied for benefits using the Department's online questionnaire, and so had only three options from which to choose to describe his termination: 1) "Quit", 2) "Terminated", or 3) "Laid-off due to lack of work". Bringman selected "laid-off due to lack of work", the description he, in good faith, believed best described his termination, as he did not leave his employment voluntarily without good cause and Albertsons did not terminate him for misconduct, which was his understanding of the meaning of the other two options. Further, Albertsons, by pressuring him to sign a false write-up that misrepresented his actions and then offering him a severe and unwarranted demotion, had given Bringman the impression that it had no more work for him similar to the work he had been performing. Thus, when examining the mere three choices offered him on the online questionnaire with no opportunity to add narrative explanation for his choice, nothing made Bringman think it was highly probable that he did not know what the question was asking. He answered the question based upon his experience in being constructively discharged from Albertsons, and did so with a great deal of certainty, having this unusual course of events fresh in his mind. If there was any failure to accurately represent the conditions of his termination, such failure was accidental and a result of the inability of a claimant to interpret how the Department's three questionnaire choices mean "constructively discharged", "quit", "separated", "laid off", "terminated" or some combination of those all at once. Because the willfulness required under

Idaho Code § 17-1366(12) does not include accidental omissions due to "negligence, misunderstanding or other cause", Bringman's application could not have been a willful misrepresentation. Because Bringman selected the "laid off" option in good faith and without reservation, fully understanding the question and believing his answer to best define the circumstances of his termination, his selection was not a willful false statement or willful failure to report a material fact.

22. In January of 2012, the Department contacted Bringman regarding his benefits. During that conversation, Bringman again accurately and in good faith conveyed the circumstances surrounding his termination and his application for benefits to the Department's representative. If Bringman had intended to willfully misrepresent his reason for leaving his employment, it would be most unusual for him to misrepresent this fact on the online questionnaire, only to spill the truth to the Department verbally shortly thereafter. Further, this was the second instance in which Albertsons had the opportunity to review and Bringman's claim for unemployment compensation. It remains a mystery why Albertsons did not contact the Department regarding its objection to his claim the first time he submitted it.

III. **The Fifth and Fourteenth Amendments.**

23. The Fifth and Fourteenth Amendments to the United States Constitution prohibit seizure of property without prior notice and hearing. Prior to losing his unemployment benefits, the Department afforded Bringman no such notice or hearing, and has suspended Bringman's right to receive benefits subject to him overcoming the burden of proof in his own defense by "clear and convincing evidence" according to Idaho Code § 72-1361. Depriving Bringman of his benefits without notice or hearing and subsequently placing on him the burden of proof to

show that he is entitled to his benefits are in clear contravention of his due process rights as set forth by the Fifth and Fourteenth Amendments.

CONCLUSION

24. For all the foregoing reasons, the Decision of Appeals Examiner asserting that Bringman quit his job without good cause, and therefore was not in compliance with the conditions for eligibility under Idaho Code Section 17-1366, should be reversed. For all the foregoing reasons, the Decision of Appeals Examiner asserting that Bringman did not provide accurate separation information as required by Idaho Code Section 17-1366 in an attempt to obtain benefits to which he was not entitled should be reversed.

DATED this 30 day of April, 2012.

CAPITOL LAW GROUP, PLLC

By: _____
C. Tom Arkoosh, Of the Firm
Attorneys for Billy J. Bringman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of April, 2012, I served a true and correct copy of the foregoing document on the person(s) listed below, in the manner indicated:

Idaho Department of Labor Appeals Bureau 317 W. Main St. Boise, ID 83735	___ ___ ___ ✓	U.S. Mail, postage prepaid Overnight Courier Hand Delivered Facsimile 332-7558

C. Tom Arkoosh

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILLY J. BRINGMAN,
SSN: [redacted]

Claimant,

v.

NEW ALBERTSONS, INC.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 2865-2012

DECISION AND ORDER

Appeal of a Decision issued by an Idaho Department of Labor Appeals Examiner denying Claimant unemployment insurance benefits. REVERSED in part; AFFIRMED in part.

Claimant, Billy J. Bringman, through counsel, appeals a Decision issued by the Idaho Department of Labor ("IDOL" or "Department") finding him ineligible for unemployment insurance benefits. The Appeals Examiner found that: 1) Claimant voluntarily quit his job without good cause connected with the employment; 2) Employer's account is not chargeable for experience rating purposes; 3) Claimant willfully made a false statement or willfully failed to report a material fact in order to obtain unemployment benefits; and 4) Claimant is not entitled to a waiver of the overpayment. Claimant, Employer and IDOL participated in the hearing. Due process was adequately served.

On April 5, 2012, Claimant requested the opportunity to submit a brief. The Commission granted that request and issued a briefing schedule by Order dated April 20, 2012. Claimant was the only party to submit a brief. (Claimant's Brief, filed April 30, 2012). The arguments contained in Claimant's brief will be considered and given appropriate weight.

In his brief, Claimant argues that he has a property right in his benefits and those benefits were denied without notice or hearing. (Claimant's Brief). Therefore, Claimant asserts a due process issue. That issue is addressed below.

The undersigned Commissioners have conducted a *de novo* review of the record pursuant to 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 before the Appeals Examiner conducted on March 12, 2012, along with the Exhibits [1 through 3; 3-A; 4 through 16] admitted into the record during that proceeding.

DUE PROCESS

Claimant asserts that his property right in his unemployment benefits was denied without notice or hearing. (Claimant's Brief). However, the record shows that Claimant was afforded adequate notice and a hearing regarding the denial of his unemployment insurance benefits. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" Mathews v. Eldridge, 424 U.S. 319, 333 (1976) (internal quotation omitted); Accord Neighbors for a Healthy Gold Fork, 145 Idaho at 127, 176 P.3d at 132. Due process requires notice and, in some cases, an evidentiary hearing. *Id.*

In accordance with Idaho Code § 72-1368(5) and IDAPA 09.01.06.026, IDOL provided Claimant with notice of the issues which denied his benefits and offered Claimant the opportunity for a hearing before an IDOL appeals examiner. (Exhibit 1). Claimant took advantage of that opportunity and participated in the hearing on March 12, 2012. (Audio recording). The Idaho Supreme Court recently held that a party's due process rights were satisfied by the initial IDOL hearing. Hopkins v. Pneumotech Inc., 152 Idaho 611, ___, P.3d 1242, 1246 (2012). Claimant received adequate due process.

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FINDINGS OF FACT

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

1. The write-up noted Claimant's "continued display of poor leadership skills" and warned if "after the date of this letter you continue to exhibit poor judgment and poor leadership skills as determined by management, you will be immediately demoted or terminated at management discretion."
2. According to Employer's cashier policy, employees are to "Verify ID on all personal check system prompts..." The policy further states "Compliance to the procedures outline [in the policy] is imperative. Associates may not, based upon perceptions of ability to pay or any other reason deviate from the stated company policy."

DISCUSSION

Quit

Claimant worked for Employer from May 12, 2004 through December 4, 2010. (Audio recording; Exhibit 7, p. 3). At the time of separation, Claimant was an Assistant Store Director. Employer asserts that Claimant had ongoing and perpetual problems with leadership. In October of 2012, Claimant refused to accept a check from a longtime customer. Employer contends that Claimant mishandled the situation and subsequently issued Claimant a write-up for the incident. (Audio recording). The write-up noted Claimant's "continued display of poor leadership skills" and warned if "after the date of this letter you continue to exhibit poor judgment and poor leadership skills as determined by management, you will be immediately demoted or terminated at management discretion." (Exhibit 12, p. 6). Claimant refused to sign the write-up. Employer subsequently sent Claimant home for approximately three weeks. (Audio recording).

After Claimant received the write-up, Employer contends that Claimant's conduct for

which he was warned of in the write-up continued. As a result, Employer contacted Claimant to meet with the Vice President of Human Resources, Shane Wright. At the meeting, Claimant was offered two employment options: either resign with a severance package and the possibility of rehire in six (6) months or accept a demotion to fourth key position person. Claimant was instructed to take the weekend to think about the choices. Claimant chose to resign because it offered the best options for future employment and because the demotion was not suitable employment. (Audio recording).

Employer maintains that Claimant quit. However, Claimant contends that he was constructively discharged because Employer forced him to quit. Pursuant to the Idaho Employment Security law, in cases where the parties dispute whether the claimant voluntarily quit or was discharged, the legal test is whether there are sufficient words or actions by an employer to logically lead a prudent employee to believe that his or her employment has been terminated. Jackson v. Minidoka Irrigation District, 98 Idaho 330, 334-335, 583 P. 2d 54, 58-59 (1977). Claimant bears the initial burden of showing that he was discharged. "Only if the claimant proves discharge does the employer have the burden of proving misconduct." Johnson v. Idaho Central Credit Union, 127 Idaho 867, 869, 908 P.2d 560, 562 (1995).

Claimant failed to sufficiently show words or actions by Employer that would logically lead a prudent employee to believe that his or her employment was terminated. Employer offered Claimant the option of leaving his job with a severance package or continued employment. (Audio recording; Exhibit 7, p. 4). Although Claimant may not have liked the choices, he was, nonetheless, offered the option of continuing work and preserving the employment relationship. Claimant testified that he chose to leave his employment and take the severance package because he felt it placed him in the best position for future employment. (Audio recording). Therefore, Claimant chose to leave his job instead of continuing employment with Employer. Claimant was the separating party in this matter.

In accordance with the Idaho Employment Security law, Claimant voluntarily left his employment rather than continue the employment relationship. Claimant quit. The analysis continues to determine whether he did so for good cause connected with the employment.

Idaho Code § 72-1366(5) provides, in pertinent part, that a claimant is eligible for unemployment insurance benefits if he or she left his employment voluntarily with good cause connected with the employment. If a claimant voluntarily quits, the claimant bears the burden of proving, by a preponderance of the evidence, that s/he quit for "good cause." Edwards v. Independence Serv., Inc., 140 Idaho 912, 915, 104 P.3d 954, 957 (2004). "A preponderance of the evidence is evidence that, when weighed with that opposed to it, has more convincing force and from which a greater probability of truth results." Id. at 916, 104 P.3d at 958.

What constitutes "good cause" for quitting employment is defined both by the Idaho Supreme Court and in the Idaho Administrative Code. 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. "Good cause" must be connected with employment, and the reason for leaving must arise from the working conditions, job tasks, or employment agreement. IDAPA 09.01.30.450.02. Further, when an employee has viable options available, voluntary termination without exploring those options does not constitute good cause for obtaining unemployment compensation. Higgins v. Larry Miller Subaru-Mitsubishi, 145 Idaho 1, 4-5, 175 P.3d 163, 166-167 (2007).

Claimant chose to quit his job when presented with only two options by Employer: 1) resign, or 2) accept a demotion to fourth key position. (Audio recording; Exhibit 7, p. 3). Retaining his position as an Assistant Store Manager was not an option. Claimant chose to resign because the demotion was not suitable employment and Claimant felt quitting was the best option regarding his future employment. (Audio recording).

Although Claimant's personal and subjective feelings regarding the preservation of his future employment does not constitute good cause for leaving his employment, the record contains sufficient evidence that the continued employment offeredby Employer was not suitable for Claimant. The Idaho Supreme Court has held that quitting work that is not suitable is always good cause for leaving employment. Clay v. BMC West Truss Plant, 127 Idaho 501, 504, 903 P.2d 90, 93 (1995). Further, an employee has good cause to quit his employment "when the conditions [are] unsuitable when compared to the conditions of the job as originally offered." Clay v. Crooks Industries, 96 Idaho 378, 379, 529 P.2d 774, 775 (1974). A wage reduction can constitute a substantial adverse change in conditions giving a claimant good cause to leave employment. Kyle v. Beco Corp., 109 Idaho 267, 269, 707 P.2d 378, 380 (1985).

At the time Claimant left his job, he faced an imminent and substantial wage reduction. His former position as an assistant manager was no longer available. The offered demotion reduced his yearly wages by at least $20,000. Furthermore, the fourth key position was not salaried, as was the assistant manager position, but was paid by the hour. Claimant testified that he may not receive many hours with the demotion. (Audio recording).

Although Employer contends that the exact terms of the demotion were not discussed, Mr. Wright did not contest the significant wage reduction or Claimant's concerns about the number of hours available. (Audio recording). Therefore, since the reduction in Claimant's wage was substantial, the job was not suitable for Claimant.

It is not lost on the Commission that Employer's reason for demoting Claimant was due to Claimant's alleged failure to follow Employer's procedures and policies and for displaying continued leadership issues. We do not wish to foster the impression that an employer is not allowed to discipline an employee as it sees fit. However, in this case, the record lacks evidence to support Employer's reason for the demotion, thereby making the demotion more akin to a unilateral change in the terms of the employment agreement.

It is undisputed that Claimant received a write up after a customer complained. The customer attempted to pay with a check; however, she did not have proper identification. (Audio recording). Employer's computer system required that ID must be shown to complete the transaction. According to Employer's policy, employees are to "Verify ID on all personal check system prompts..." The policy further states "Compliance to the procedures outlined [in the policy] is imperative. Associates may not, based upon perceptions of ability to pay or any other reason deviate from the stated company policy." (Exhibit 12, p. 7). Since the customer did not have identification, Claimant declined to accept the check. Claimant testified that he calmly explained the situation to the customer, but the customer became irate. (Audio recording). Employer did not offer any first hand evidence to dispute Claimant's testimony.

The customer apparently notified Employer about the incident and Employer issued Claimant a write-up. The write-up instructed Claimant to follow Employer's policy and procedure and noted Claimant displayed poor leadership skills during the incident. (Exhibit 7, p. 5). The record lacks any evidence of Claimant's "poor leadership skills" and Employer did not elaborate during the hearing. Based on this record, Claimant acted in accordance with Employer's policy and there is no evidence that he exhibited "poor leadership skills."

Claimant further testified that, after receiving the write-up, he was suspended for three weeks and did not work. Thereafter, he met with Mr. Wright and, at that time, was offered the demotion. While Mr. Wright contends that the demotion was in response to continued leadership problems displayed by Claimant after the write-up, Mr. Wright does not have personal knowledge that Claimant returned to work after the incident. Rather, Mr. Write only talked with a co-worker who stated Claimant had returned to work. (Audio recording). Claimant's first hand testimony carries greater weight than Mr. Wright's hearsay testimony. Therefore, this record lacks sufficient evidence of Claimant's poor leadership skills that led to the offer of a demotion. In other words, the record lacks competent evidence that Employer's offer of the

demotion was due to Claimant's conduct. Therefore, Employer's offer of a demotion is more akin to a unilateral change in employment and the offer of continued employment, as analyzed above, was not suitable.

Employer's offer of continued employment at a substantially lower wage was not suitable work for Claimant under the facts contained in this record. This reason constituted good cause to voluntarily leave his employment.

Even though Claimant's reason constituted good cause to quit, Claimant must also establish that he explored viable options prior to quitting. Claimant testified that he talked with Mr. Wright and his supervisor about the check incident and to explain his circumstances, however those attempts were futile. He also expressed his dissatisfaction with the demotion to Mr. Wright. However, Claimant was presented with only two options: either resign or be demoted. (Audio recording). There is no indication in this record that any other available options existed for Claimant. Claimant is eligible for benefits.

Chargeability

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. Employer paid the most wages to Claimant during the last four base quarters. (Exhibit 14). Since Claimant voluntarily left his employment for good cause connected with the employment, Employer's account is chargeable for experience rating purposes.

Willful Failure to Report Material Facts

When Claimant filed for benefits effective December 5, 2010 and December 12, 2011, Claimant reported his separation from Employer was cause by a "Layoff due to lack of work." (Exhibits 3 & 3-A). However, IDOL determined that Claimant was not laid off due to lack of work and that Claimant willfully made a false statement in order to obtain unemployment

insurance benefits. (Exhibit 9). Claimant disagrees.

Idaho Code § 72-1366(12) provides that a claimant is ineligible for unemployment insurance benefits if it is determined that he or she willfully made a false statement or failed to report a material fact to IDOL. Furthermore, Idaho Code § 72-1366(12) also disqualifies a claimant for a period of fifty-two (52) weeks to any benefits he or she may otherwise be entitled to in the future. A claimant has the burden of proving his/her eligibility for benefits by a preponderance of the evidence whenever the claim is questioned. Guillard v. Department of Employment, 100 Idaho 647, 653, 603 P.2d 981, 987 (1979).

The Idaho Supreme Court has ruled that a claimant who fails to accurately report the reason for his separation can be found to have willfully made a false statement under Idaho Code §72-1366(12). Current v. Haddon Fencing, 152 Idaho 10, 266 P.3d 485 (2011). Claimant does not dispute that he reported "Layoff due to lack of work" from Employer when he filed for benefits. Nor does Claimant dispute that when he filed for benefits on December 8, 2010 and again on December 12, 2011, he did so for the purpose of obtaining benefits. (Audio recording; Exhibits 3, p. 1 & 3-A, p. 1). Rather, Claimant contends that any failure to accurately report on his claims was not done willfully. (Audio recording). Therefore, the crux of this matter is determining whether Claimant's false statement was willful.

The Idaho Supreme Court has defined "willful" as follows:

> "(Willfully) implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done, in that it does not necessarily imply an evil mind, but is more nearly synonymous with 'intentionally,' 'designedly,' 'without lawful excuse,' and therefore not accidental."

Meyer, at 761, 589 P.3d at 96. The Court has also held that it is sufficient to find a claimant's actions willful when the Department made the claimant aware of the reporting requirements, but the claimant nonetheless failed to follow those regulations. In Gaehring v. Department of Employment, 100 Idaho 118, 594 P.2d 628 (1979), the Court affirmed the Commission's determination that the claimant willfully failed to report his earnings based on evidence that the claimant was aware of the regulations regarding unemployment insurance but did not follow those regulations when reporting. Gaehring, 100 Idaho at 119, 594 P.2d at 629.

During the claim filing process, Claimant was required to watch a slide show and review the Unemployment Insurance Claimant Rights, Responsibilities and Filing Instructions pamphlet ("pamphlet.") (Audio recording; Exhibit 2-B). The slide show specifically informed Claimant that the information he provided must be accurate and expressly stated fraud included making false statements such as reporting a claimant was laid off when the claimant quit. During the slide show, Claimant was also informed that he was responsible for knowing the information found in the pamphlet. (Audio recording). The pamphlet reiterated that fraud included "Failing to notify the Idaho Department of Labor when you quit or are discharged from work..." (Exhibit 2-B, p. 15). The pamphlet also instructed Claimant that if "there is anything you do not understand, ask your local office." (Exhibit 2-B, p. 3). It provided phone numbers for all of IDOL's local offices. (Exhibit 2-B, p. 17). Therefore, Claimant was adequately warned that he must accurately report his separation when he filed his claim.

Claimant asserts that he picked the best option from the drop down menu provided on the claim filing system when asked for the reason that he left his employment. Claimant asserts that he was laid off due to a lack of suitable employment. However, since the drop down menu only allowed Claimant to choose "quit," "discharge," and "laid off due to lack of work," Claimant felt that the "laid off due to lack of work" was the best option. (Audio recording).

When reviewing a claimant's testimony explaining his or her failure to accurately report

on a claim, the Idaho Supreme Court has stated that "The fact finder may consider the claimant's explanation unworthy of belief." Meyer, at 762, P.2d at 97. Based on the evidence in the record, such is the case here. Claimant testified that he did not believe he quit his employment. However, Claimant agreed that he was presented with the option of either continuing his employment or not. (Audio recording). The decision to separate his employment relationship was solely Claimant's. Claimant chose to leave his employment even though additional work was available. A reasonable individual would most likely find that they quit their employment in that situation.

However, even if we were to find that Claimant did not believe he quit his job, the record shows that Claimant understood that none of the options offered on the claim filing system, including the option he chose, fit his situation. However, despite that understanding, and knowing from the instructions provided by the claim filing system that he must provide accurate information, Claimant never contacted the department for clarification on how to accurately report his situation. Claimant stated he did not choose "quit" or "discharge" because he did not believe that either option applied to his situation. However, Claimant also acknowledged that he was not "laid off due to lack of work." When asked if continuing work was available, Claimant agreed. (Audio recording). Therefore, applying Claimant's logic, none of the options accurately characterized the nature of his separation.

Claimant knew the option he chose was not accurate. However, Claimant admits that he never contacted the Department for clarification on which option he was to choose. (Audio recording; Exhibit 6, p. 3). The Idaho Supreme Court has concluded that when a "claimant knew what information IDCL [IDOL] solicited, but nevertheless deliberately chose to respond without pursuing clarification ordinarily supports a finding of willful falsehood or concealment." Cox v. Hollow Leg Pub and Brewery, 144 Idaho 154, 158, 58 P.3d 930, 934 (2007), *citing* Meyer, at 762, 589 P.2d at 97 (1979).

Individuals filing claims for unemployment benefits do make inadvertent errors that do not stem from any malicious intent. However, in this case, IDOL provided Claimant with adequate information that he must provide accurate separation information when he filed his claim and to contact the Department if he had questions. Despite knowing that he was not "laid off due to lack of work," Claimant nonetheless picked that option without seeking any clarification as he was instructed to do. Claimant's failure to accurately report his separation information constitutes a disregard of his obligation to report this information as accurately as possible. Therefore, Claimant's behavior during the relevant weeks was the type Idaho Code § 72-1366(12) was intended to discourage. Claimant is ineligible for waiting week credit and benefits for the weeks effective December 5, 2010 through December 3, 2011 and December 11, 2011 through January 14, 2012 as well as the fifty-two (52) week disqualification period effective February 5, 2012 through February 2, 2013.

Waiver

The Appeals Examiner also concluded that Claimant is ineligible for a waiver and must repay the benefits he received, but to which he was not entitled. Claimant received his benefits from the State of Idaho. (Exhibit 10). Idaho Code provides that the requirement to repay an overpayment, other than one resulting from a false statement, misrepresentation, or failure to report a material fact by the claimant, can be waived. However, the claimant must demonstrate that 1) the benefit payments were made solely as a result of department error and made to a claimant who could not reasonably have been expected to recognize the error; or 2) the benefit payment was a result of an employer misrepresenting wages earned and the claimant could not reasonably have been expected to recognize the error. Idaho Code § 72-1369(5) (2011).

Claimant received benefits for the weeks at issue because he did not disclose all of the material information relevant to determining his eligibility. In particular, Claimant received benefits because he failed to accurately report the reason for his separation from Employer. As

concluded above, Claimant's false statement was willful. Idaho Code § 72-1369(5) specifically excludes from eligibility for a waiver those claimants whose overpayment resulted from a false statement, misrepresentation, or failure to report a material fact. Because Claimant received unemployment benefits in violation of § 72-1366(12), he is ineligible for a waiver and must repay the benefits he received, but to which he was not entitled, as well as the applicable penalties assessed in accordance with Idaho Code § 72-1369(2).

CONCLUSIONS OF LAW

I

Claimant voluntarily quit his job with good cause connected to the employment.

II

Employer's account is chargeable for experience rating purposes.

III

Claimant willfully made a false statement or willfully failed to report a material fact for the purpose of obtaining unemployment benefits and is ineligible for waiting week credit and unemployment insurance benefits effective December 5, 2010 through December 3, 2011 and December 11, 2011 through January 14, 2012, as well as the fifty-two (52) week period effective February 5, 2012 through February 2, 2013.

III

Claimant is not entitled to a waiver of the overpayment and must repay benefits that he received, but to which he was not entitled.

IV

Claimant is subject to the associated penalty pursuant to Idaho Code § 72-1369(2).

ORDER

Based on the foregoing analysis, the Decision of the Appeals Examiner is REVERSED as to the issue of separation and chargeability and AFFIRMED on all other issues. Claimant

voluntarily quit his job with good cause connected to the employment. Employer's account is chargeable for experience rating purposes. Claimant willfully made a false statement or willfully failed to report a material fact for the purpose of obtaining unemployment benefits and is ineligible for waiting week credit and unemployment insurance benefits effective December 5, 2010 through December 3, 2011 and December 11, 2011 through January 14, 2012, as well as the fifty-two (52) week period effective February 5, 2012 through February 2, 2013. Claimant is not entitled to a waiver of the overpayment and must repay benefits that he received, but to which he was not entitled. Claimant is subject to the associated penalty pursuant to Idaho Code § 72-1369(2). This is a final order under Idaho Code § 72-1368(7).

DATED this 10th day of July, 2012.

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 6th day of July, 2012 a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

CAPITOL LAW GROUP PLLC
ATTN: C TOM ARKOOSH
PO BOX 2598
BOISE, IDAHO 83701-2598

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

sb

Jessica A Soleri

C. Tom Arkoosh, ISB # 2253
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P.O. Box 2598
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Telephone (208) 424-8872
Facsimile (208) 424-8874

Attorney for Billy J. Bringman

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BILLY J. BRINGMAN, SSN [redacted] Claimant/Appellant, vs. NEW ALBERTSONS INC., Employer/Respondent, and IDAHO DEPARTMENT OF LABOR, Respondent.	IDOL No. 2865-2012 **NOTICE OF APPEAL**

TO: THE ABOVE NAMED RESPONDENTS, NEW ALBERTSONS INC, AND THE IDAHO DEPARTMENT OF LABOR AND THEIR ATTORNEYS OF RECORD, AND THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO:

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, Billy J. Bringman, appeals against the above named respondents to the Idaho Supreme Court from the Decision and Order entered in the above entitled

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action on the 9th day of July, 2012, the Idaho Industrial Commission Chairman Thomas E. Limbaugh, presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11 (d) I.A.R.

3. A preliminary statement of the issues on appeal are:

(a) Whether the Industrial Commission erred in simultaneously finding constructive discharge and ordering return of the award.

(b) Whether the Industrial Commission erred in finding Appellant willfully made a material false statement or willfully failed to report a material fact in order to obtain unemployment benefit.

(c) Whether the Industrial Commission erred in finding Appellant not entitled to a waiver under the circumstances of this case.

(d) Whether the Industrial Commission erred in finding the Commission made the Appellant aware of the reporting requirements.

(e) Whether the Industrial Commission erred in finding, under the circumstances, Appellant made an inaccurate statement.

(f) Whether the Industrial Commission erred in finding the Appellant's explanation unworthy of belief when the Industrial Commission failed to provide "accurate" options but instead provided options that did not reflect reasons for leaving work described in statutory language.

(g) Whether the Industrial Commission erred in finding the decision to separate from Appellant's employment relationship was solely Appellants, while

simultaneously finding that Appellant's employer constructively discharged Appellant.

(h) Whether the Industrial Commission erred in finding the Appellant had an affirmative duty to contact the Industrial Commission to assure the Industrial Commission clarify its forms to more accurately reflect his circumstance; or, is Appellant's duty to provide the most accurate information allowed.

(i) Whether the Industrial Commission erred in finding the Appellant had an affirmative duty to investigate the state's employment law and determine whether the information options provided by the Industrial Commission were in fact accurate.

(j) Whether the Industrial Commission erred in finding that Appellant was not entitled to waiver because Appellant should have recognized the Commission's error in the Commissions information retrieval system.

(k) Whether the Industrial Commission erred in finding Appellant received benefits because of material false statements rather than receive benefits because he was entitled to benefits because Appellant was constructively discharged.

(l) The Appellant reserves the right to present other issues on appeal.

4. No order has been entered sealing any portion of the record.

5. An Agency's transcript is requested.

6. Appellant requests the contents of the Agency's record contain the standard documents as outlined in Idaho Appellate Rule 28(b)(3), in addition to the following:

(a) The Appellant requests the audio recording of the hearing before the Appeals Examiner conducted on March 12, 2012, along with the Exhibits [1 through 3; 3-A; 4

through 16] admitted into the recording during that proceeding, to be copied and sent to the Supreme Court.

(b) Claimant's Brief, filed April 30, 2012.

7. The appeal is taken upon matters of law.

8. I certify the following:

(a) A copy of this Notice of Appeal has been served on the Commission Secretary.

(b) The Appellant has paid the appellate filing fee pursuant to I.A.R. 23(a)(3).

(c) The Appellant has paid the administrative agency the estimated fee for preparation of the Agency's record and transcript.

(d) That service has been made upon all parties required to be served pursuant to I.A.R. 20 and the Attorney General of the State of Idaho pursuant to Idaho Code Section 67-1401(1).

DATED this 1st day of August, 2012.

CAPITOL LAW GROUP, PLLC

C. Tom Arkoosh
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of August, 2012, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Deputy Attorney General Idaho Department of Labor 317 W. Main St. Boise, ID 83735	✓	United States Mail, Postage Prepaid Overnight Courier Via Facsimile Hand Delivered
Commission Secretary Idaho Industrial Commission P.O. Box 83720 Boise, ID 83720-0041	✓	United States Mail, Postage Prepaid Overnight Courier Via Facsimile Hand Delivered
New Albertsons Inc c/o TALX UC Express Attn: Frank Eckert P. O. Box 173860 Denver, CO 80217-3860	✓	United States Mail, Postage Prepaid Overnight Courier Via Facsimile Hand Delivered

C. Tom Arkoosh

Capitol Law GROUP, PLLC

301 Main Street
P.O. Box 32
Gooding, ID 83330

RETURN SERVICE REQUESTED

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

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN,

Claimant/Appellant,

v.

NEW ALBERTSONS, INC.,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR/Respondent.

SUPREME COURT NO. 40232

2012 AUG -8 A 9:12

CERTIFICATE OF APPEAL
CLAIMANT BILLY J. BRINGMAN

FILED

AUG - 7 2012

INDUSTRIAL COMMISSION

Appeal From:	Industrial Commission Chairman Thomas E. Limbaugh presiding.
Case Number:	IDOL # 2865-2012
Order Appealed from:	DECISION AND ORDER FILED JULY 6, 2012
Representative/Claimant:	TOM C. ARKOOSH 250 N 10TH STREET, 4TH FLOOR PO BOX 2598 BOISE ID 83701-2598
Representative/Employers:	NEW ALBERTSONS, INC., PRO SE C/O TALX UC EXPRESS ATTN: FRANK ECKERT PO BOX 173860 DENVER CO 80217-3860
Representative/IDOL:	TRACEY K. ROLFSEN DEPUTY ATTORNEY GENERAL 317 W. MAIN STREET BOISE, ID 83735
Appealed By:	TOM C. ARKOOSH/Appellant
Appealed Against:	NEW ALBERTSONS, INC., PRO SE/Respondents and IDAHO DEPARTMENT OF LABOR/Respondent
Notice of Appeal Filed:	AUGUST 1, 2012
Appellate Fee Paid:	$86.00
Transcript:	Transcript will be ordered
Dated:	AUGUST 7, 2012
JS	Jessica A. Solis, Assistant Commission Secretary

FILED - ORIGINAL

AUG - 8 2012

Supreme Court Court of Appeals

Entered on ATS By

INDUSTRIAL COMMISSION SEAL STATE OF IDAHO

CERTIFICATION OF RECORD

I, Jessica Solis, 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 Supreme Court No. 40232 on appeal by Rule 28(b)(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 4th day of September, 2012.

INDUSTRIAL COMMISSION

Jessica A. Solis
Assistant Commission Secretary

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN, Claimant/Appellant, v. NEW ALBERTSONS, INC., Employer/Respondent, and IDAHO DEPARTMENT OF LABOR/Respondent.	**SUPREME COURT NO. 40232** **NOTICE OF COMPLETION**

TO: STEPHEN W. KENYON, CLERK OF THE COURTS; AND C. TOM ARKOOSH, ESQ., FOR CLAIMANT BILLY J BRINGMAN; AND NEW ALBERTSONS, INC. PRO SE FOR EMPLOYER/RESPONDENT; AND TRACEY K. ROLFSEN, ESQ., FOR 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:

TOM C. ARKOOSH
250 N 10TH STREET, 4TH FLOOR
PO BOX 2598
BOISE ID 83701-2598

NEW ALBERTSONS, INC., PRO SE
C/O TALX UC EXPRESS
Did not participate at IIC level.
No record will be provided

TRACEY K. ROLFSEN
DEPUTY ATTORNEY GENERAL
317 W. 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 this date in which to file objections to the Record,

(54)

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 March 12, 2012 Transcript and Record shall be deemed settled.

DATED at Boise, Idaho this 4th day of September, 2012.

INDUSTRIAL COMMISSION

Jessica A Solis

Jessica A Solis
Assistant Commission Secretary