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IN THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN, **Appellant,** **vs.** **NEW ALBERTSONS INC.,** **Respondent,** **and** **IDAHO DEPARTMENT OF LABOR,** **Respondent.**	**Supreme Court No. 40232**

APPELLANT'S BRIEF

APPEAL FROM THE INDUSTRIAL COMMISSION
OF THE STATE OF IDAHO
Chairman Thomas E. Limbaugh, presiding

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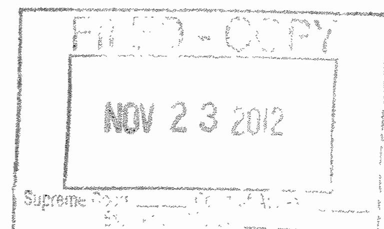

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I.

STATEMENT OF THE CASE

A. Nature of the Case

This case comes before this Court based upon determinations of fraud and overpayment by the Idaho Department of Labor (the "Department"). Billy Bringman ("Mr. Bringman") worked for Albertsons from 2004, until December 2010. Mr. Bringman's termination came about following an unfounded complaint lodged by a customer of the store in which he worked. As it turned out in the record, Mr. Bringman precisely followed company policy in the circumstances in which he found himself, but was nevertheless unfairly disciplined by his employer. The Department found that this discipline amounted to constructive termination. In light of this finding, Mr. Bringman seeks to have his benefits reinstated and to have overturned the Commission's finding that he willfully misrepresented a material fact in order to obtain his benefits.

B. Course of Proceedings

On February 8, 2012, the Department issued Mr. Bringman two Determinations of Overpayment ("Determinations"), one for ineligibility based on the circumstances of his termination, and one for fraudulent misrepresentation of fact underlying his eligibility. Mr. Bringman timely filed a protest of both of these Determinations to the Department. On March 12, 2012, Mr. Bringman came before the Appeals Examiner (the "Examiner") for a hearing on his protests. On March 23, 2012, the Examiner issued a decision holding that: 1) The employer's account is not chargeable on Mr. Bringman's claim; 2) Mr. Bringman quit his job without good cause connected to his employment; 3) Mr. Bringman's benefits are denied; 4) Mr. Bringman willfully made a false statement or failed to report a material fact on his claim; and 5) Waiver of the requirement that Mr. Bringman repay benefits owed to the Employment Security Fund is not granted. Mr. Bringman

timely appealed to the Idaho Industrial Commission (the "Commission"). On July 6, 2012, the Commission issued its Decision and Order ("Decision"). In its Decision, the Commission held that: 1) Mr. Bringman voluntarily quit his job with good cause connected with his employment; 2) Albertsons' account is chargeable for experience rating purposes; 3) Mr. Bringman willfully made a false statement or willfully failed to report a material fact for the purpose of obtaining unemployment benefits and is ineligible for unemployment insurance benefits; 4) Mr. Bringman is not entitled to a waiver of the overpayment and must repay benefits that he received, but to which he was not entitled; and 5) Mr. Bringman is subject to the associated penalty pursuant to Idaho Code § 72-1369(2).

C. Statement of Facts

Mr. Bringman worked for Albertsons from 2004, not long after his return from active combat duty in Iraq, until December 2010. Tr p. 6, L. 2-3. Albertsons check policy requires that store employees see customer identification prior to accepting checks from customers as payment for purchases at the store. R Exhibit 13, p.7. On October 5, 2011, a customer tried to purchase groceries from the Albertsons store at which Bringman worked without identification. R Exhibit 12, p. 6. Pursuant to Albertsons policy, Bringman did not accept the customer's check without identification. Tr p. 8, L. 19-22.

On October 26, 2010, an Albertsons store director issued Bringman a written warning for poor performance and poor leadership skills relating to this customer check issue. R Exhibit 12, p.6. Because Bringman followed company policy in not accepting the check, Bringman refused to sign the warning. Tr p. 10, L. 14-15. Following Bringman's refusal to sign the warning, the store director sent him home until further notice. Tr p. 11, L. 12-14. 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"). Tr p. 12, L. 15-17. At that meeting, Wright presented Bringman with two options. Tr p. 12, L. 21-25; p. 13, L. 1-25. First, Bringman could resign and accept a severance package and Albertsons would not contest any filing for unemployment benefits. *Id.* Alternatively, Wright told Bringman he could stay with the company, but that Albertsons 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 annually 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. *Id.*

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. R Exhibit 8. 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. Tr p. 49, L. 2-7. The application sets forth no option for constructive discharge or quit for good cause. Tr p, 20, L. 2-8. 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. Tr p. 19, L. 2-3 The record fails to show any contest by Albertsons to Bringman's first application for unemployment benefits. This is in keeping with Albertsons deal that it would not contest the application Tr p. 17, L. 14. The Department responded to Bringman's December 2011 reapplication with the two 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. R Exhibits 8-9. Bringman appealed the Department's Determinations, and on March 12, 2012, a hearing was held in front of the Department's Appeals Examiner ("Examiner"). Tr p. 1.

At the hearing, Wright testified that Albertsons terminated Bringman due to problems with Bringman's performance following the write-up, which problems were reported to Wright on a "call from the store director and the district manager." Tr p. 40, L. 14-15. Wright further testified 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...." Tr p. 42, L. 17-18. Wright went on to testify that Bringman, following the write-up, "...had made it worse in the store." Tr p. 42, L. 22-23. During further testimony, Wright agreed that the write-up was titled "Last and Final Warning." Tr p. 43, L. 10-20.

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]." Tr p. 44, L. 9-10. Bringman testified that he, in fact, did not return to work following the write-up. Tr p. 50, L. 15-17. The record fails to reflect any corporate records produced as direct evidence to conflict with Bringman's testimony.

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." Tr p. 54, L. 9-10. Bringman, earlier in his testimony, had explained 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. Tr p. 13, L. 2-7; p. 17, L. 19-21. Mattson, however, asked Bringman whether there was any other work he could do for Albertsons. Tr p. 54, L. 12-13. Bringman accurately responded that by her definition of "any work," meaning any other labor he could perform for the benefit of Albertsons, there was some other work available. Tr p. 55, L. 10-11.

At the hearing, Bringman testified that he left his employment for good cause. Tr p. 18, L. 5-8. 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. Tr p. 57, L. 23-25; p. 58, L. 1-2. However, when claimant's counsel 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. Tr p. 58, L. 3-7. When counsel asked whether using the language of the statute might make the questionnaire clearer, Mattson answered, "No. That's why we do the fact finding…." Tr p. 58, L. 11. 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 one question regarding "quit for lack of work." Tr p. 58, L. 15-18. In response to further questioning, Mattson then asserted that, although the fact finding she had described did not take place, 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." Tr p. 58, L. 25; p. 59, L. 1-2. When asked if defining that very phrase was the reason for the hearing, Mattson further denied the lack of clarity in the questionnaire that led to the hearing, and acknowledging that the Department questionnaire did not contain the statutory language, stating, "…we're having a discussion about whether or not the claimant voluntarily quit his job…." Tr p. 59, L. 5-7.

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.

Tr p. 47, L. 24; p. 48, L. 20. Also 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." Tr p. 47, L. 23-24; p. 49, L. 6-7. 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." Tr p. 48, L. 18-20. When, in further inquiring as to ways to make the questionnaire clearer, counsel for Bringman asked if the state agreed or disagreed that it should supply a line item for "termination without cause," Mattson answered, "Disagree." Tr p. 60, L. 21. Following that response, counsel 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." Tr p. 60, L. 23-25; p. 61, L. 1.

In Mr. Bringman's testimony, he states, "I would have been signing a document saying I had done something wrong, when in actuality I was following company policies and procedures…." Tr p. 10, L. 20-22. Bringman's testimony goes on to describe the contrast between the write-up and the Albertsons policy statement. Tr p. 10, L. 23-25; p. 11, L. 1-5. 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." R p. 4. Following appeal to the Idaho Industrial Commission (the "Commission"), the Commission reversed the Examiner's conclusions that Bringman voluntarily quit his job without good cause connected with his employment and that Albertsons account was not chargeable for experience rating purposes. R p. 43. The Commission, however, upheld the Examiner's holding that Bringman willfully made a false statement or willfully failed to report a

material fact in order to obtain employment benefits and that Bringman is not entitled to a waiver of the overpayment. *Id.*

II.

ISSUES PRESENTED ON APPEAL

1) Whether Bringman willfully made a false statement or willfully failed to report a material fact in order to obtain unemployment benefits; and
2) Whether, if Bringman made a false statement or willfully failed to report a material fact in order to obtain unemployment benefits, he is entitled to a waiver of the overpayment.
3) Whether Bringman is entitled to attorneys fees under Idaho Code §§ 12-117 and/or 12-123.

III.

ATTORNEY FEES ON APPEAL

Bringman hereby requests that Court award Appellant under Idaho Code §§ 12-117 and 12-123, and adopts the arguments made herein for that purpose.

IV.

STANDARD OF REVIEW

"The Court may affirm an order or award made by the Commission, 'or may set it aside only upon the following grounds: (1) the commission's findings of fact are not based on any substantial competent evidence; (2) the commission has acted without jurisdiction or in excess of its powers; (3) the findings of fact, order or award were procured by fraud; (5) the findings of fact do not as a matter of law support the order or award." *McNulty v. Sinclair Oil Corp.*, 152 Idaho 582, 272 P.3d 554,

556 (2012), quoting Idaho Code § 72-732. The Court "will not disturb the Commission's findings of fact unless they are clearly erroneous and not supported by substantial and competent evidence. *McNulty*, 152 Idaho at 556, citing *Ewins v. Allied Sec.*, 138 Idaho 343, 346, 63 P.3d 469, 472 (2003). "Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." *McNulty*, 152 Idaho at 556-557, quoting *Uhl v. Ballard Med. Prod., Inc.*, 138 Idaho 653, 657, 67 P.3d 1265, 1269 (2003). "Nevertheless, the Court exercises free review over the Commission's legal conclusions." *McNulty*, 152 Idaho at 557, citing *Ewins*, 138 Idaho at 346.

V.

ARGUMENT

A. If the Commission's reasoning holds true, Bringman's selection of "laid off/lack of work" was the most accurate among those available.

If the Commission's conclusion that Bringman experienced a unilateral change in the terms of his employment is true, it must also be true that he was laid off due to Albertsons representation that it had no further work for him. In its Decision, the Commission held that 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." R p. 36. Further, it held that, while Albertsons offered Bringman another position, "the job was not suitable for claimant." *Id.* By asserting that Bringman had good cause to quit, the Commission asserts that he meets the standard for good cause, which is that he faced "real substantial, and compelling circumstances that would have forced a 'reasonable person' to quit." R p. 35. This standard is constructive termination, which arises when an employer makes working conditions unendurable, resulting in an employee's reasonable decision to resign. *Waterman v. Nationwide Mut. Ins. Co.*, 201 P.3d 640, 645 (Idaho

2009). Holding that Bringman had good cause to quit by virtue of his former position being taken away in favor of a job "not suitable for" him is the same as stating that the employer had made working conditions unendurable to where the employee was reasonable in his decision to resign. In other words, stating that Bringman left for good cause because he had been forced into an unsuitable position is the same as saying he was constructively discharged. In this case, he was so discharged by being told that his former position was no longer available, and that his only options were a demotion or severance.

Later in its Decision, however, the Commission reverses the logic which led it to the conclusion that Bringman had good cause to quit. The Commission asserts that choosing the option "quit" on the Department's form would have been more appropriate because Bringman "was presented with the option of either continuing his employment or not." R p. 41. While acknowledging that Bringman was forced out of his employment, the Commission contorts this same standard, concluding that, "A reasonable individual would most likely find that they quit their employment in that situation." *Id.* Although the Commission points out that Bringman was "offered the option of continuing work and preserving the employment relationship" and that Bringman "was the separating party in this matter," it is splitting hairs to say that constructive termination when an employer takes away a person's work is so materially different from being laid off for lack of that work that a lay person should notice the difference in a check-the-box form to such a degree that he asks for assistance. R p. 34. Because he was indeed forced out of a position by being told his work was no longer available, "laid off for a lack of work" was the most accurate choice available.

B. If Mr. Bringman's selection of "laid off for lack of work" was not the most accurate, any misstatement was not intentional, but accidental, and therefore not willful.

If, indeed, Mr. Bringman's choice of "Laid Off/Lack of Work" was not the most accurate of the choices offered on the Department's form, it was not due to a willful misstatement on the part of Mr. Bringman. Idaho Code § 72-1366(12) makes a claimant ineligible for benefits where "he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits." However, in order to act willfully, a claimant must "purposely, intentionally, consciously, or knowingly fail to report material facts." *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 761, 589 P.2d 89, 96 (1979). *Meyer*, however, also makes clear that willfully "'is more nearly synonymous with 'intentionally,' 'designedly,' 'without lawful excuse,' and therefore not accidental.'" *Id.*, quoting *Archbold v. Huntington*, 34 Idaho 558, 565, 201 P. 1041, 1043 (1921). As *Meyer* explains, that definition of willful does not intend to disqualify claimants whose omission is "accidental because of negligence, misunderstanding or other cause." *Meyer*, 99 Idaho at 761.

In its Decision, the Commission blurs the line between what Mr. Bringman understood at the time he was completing the online multiple-choice questionnaire and what he understood after focused explanation and questioning by the Department during Mr. Bringman's hearing. During the hearing in front of the appeals examiner, Mr. Bringman stated that he understood "laid off for lack of work" to best describe his situation. R p. 40. The Commission proposes that willful includes the scenario in which a "claimant [knows] what information IDCL [*sic* IDOL] solicited, but nevertheless deliberately chose to respond without pursuing clarification...." R p. 41, citing *Cox v. Hollow Leg Pub and Brewery*, 144 Idaho 154, 158, 58 P.3d 930, 934 (2007). Indeed in *Cox*, cited here by the Commission, the only thing the claimant was required to disclose were answers that were "true and accurate." *Cox* at 933. The standard for truthfulness requires much less technical understanding than here, where Bringman was expected to know the language of the statute and the distinction between termination options when he is the "separating party" and when the employer is the

"separating party." The Commission also cites *Gaehring v. Department of Employment* as precedent for the Court to affirm the Commission's determination that a "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." 100 Idaho 118, 119, 594 P.2d 628, 629 (1979). However, the Commission fails to make the distinction between *Gaehring*, where, again, a claimant needed only to know that the regulations required truthfulness, and here, where the Department is requiring that a claimant know not only what question the Department is asking them, but also what the Department really means by that question and what it really means by the answer options it provides. The answer to neither of those questions, as reflected by the Department's continued use of the word "separation," can be found in the regulations. It is ironic that, having failed to make its questions clear by failing to use the statutory language in its questionnaire, the Department's decision necessarily relied upon a finding of "separation," another concept that did not appear in its questionnaire, to form a clear description of Bringman's actions.

Therefore, at the time he selected an answer to the form's question, Mr. Bringman felt confident in his understanding of the form and the information it sought, especially after having read and understood the instructions, none of which explained the three choices or offered an opportunity to elaborate on them. During this time, as reflected in his testimony at the hearing, Mr. Bringman never "found it highly probable that he...did not know what information the question solicited." *Meyer*, 99 Idaho at 762. In fact, *Meyer*, cited by the Commission in defining willfulness, goes on to compare the type of requisite knowledge for willfulness to a case where a statement with reckless disregard of whether statements were true and to a case where a defendant deliberately avoided positive knowledge of contraband's presence. *Id.* The levels of disregard in those cases require a level of knowledge beyond what Mr. Bringman could have had with regard to the Department's

inquiry. For instance, Mr. Bringman could not have known either that the Department was seeking to probe the difference between the legal constructs of quit for good cause, termination, and constructive termination or that only two of the choices offered him on an online form would allow him an opportunity to explain his choice after the fact.

C. Although the Commission claims that Mr. Bringman's explanation is unworthy of belief, Mr. Bringman's testimony is adequate to support the Commission's earlier conclusion.

In asserting that Mr. Bringman's claims are unworthy of belief, the Commission relies on testimony that is not reasonably adequate to support its conclusion. In its Decision, the Commission asserts that Mr. Bringman's testimony is unworthy of belief. To disregard testimony, the Commission must find that the testimony is not supported by substantial and competent evidence. *Ewins v. Allied Security*, 138 Idaho 343, 346, 63 P.3d 469, 473 (2003), citing *Dennis v. School Dist. No. 91*, 135 Idaho 94, 15 P.3d 329, 331-32 (2000). Evidence is substantial when it is "relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Ewins*, 138 Idaho at 346, citing *Jensen v. City of Pocatello*, 135 Idaho 406, 412, 18 P.3d 211, 217 (2000). Here, the Commission asserts that Mr. Bringman's testimony is unworthy of belief because "the decision to separate his employment relationship was solely [Mr. Bringman]'s," and, therefore, he should know that he quit his employment. R p. 41. However, as set forth above, the Commission itself acknowledged that Mr. Bringman had good cause to quit, but that "good cause" was not an option available on the form. Furthermore, the Commission relies on its proposition that Mr. Bringman "acknowledged that he was not "laid off due to lack of work." *Id.* However, this proposition omits the relevant parts of Mr. Bringman's testimony where, as mentioned above, he agrees that his choice of "laid off for lack of work" was, in hindsight, not correct only "by [the Department's] definition,"

during the hearing, of the terms contained therein. Tr p. 55, L. 10-11. No reasonable mind could accept that, while, on the one hand, the Commission sets forth its reasoning that Mr. Bringman had good cause to quit, on the other hand it finds that the choice to quit was "solely" his own. Had his position and reasonable options not been denied, Mr. Bringman's employment with Albertsons would have continued. Indeed, even the Commission asserted that the circumstances of his termination were more "akin to a unilateral change in the terms of the employment agreement." R p. 36. It is directly conflicting to the Commission finding that Mr. Bringman's testimony was adequate to support its reasonable conclusion that he quit for good cause, but not adequate to support the conclusion that he then represented that same conclusion in his claim for unemployment benefits.

D. Bringman's statement did not reflect the requirements of the applicable statute, and so was not material.

The answer Bringman provided to the online questionnaire did not reflect the requirements of the applicable statute, and so was not material. To be material, a fact must be "relevant to the determination of a claimant's right to benefits…." *Meyer*, 99 Idaho at 760. However, the fact in question "need not actually affect the outcome" of the determination of the claimant's rights to benefits. *Id.* Idaho Code § 72-1366 sets forth the eligibility requirements for unemployment benefits. In deciding whether a claimant is eligible for unemployment benefits, the Department uses the criteria in this statute. However, the question at issue in Mr. Bringman's case is not a reflection of these statutory requirements. While Idaho Code § 72-1366 sets the standards of leaving employment "voluntarily without good cause connected with his employment" and being "discharged for misconduct in connection with [one's] employment," this is different than the multiple-choice form makes between: 1) Quit; 2) Terminated; or 3) Laid-off due to lack of work. In fact, the questionnaire itself presents only one good cause exception ("laid-off for lack of work"), as

opposed to the plethora of opportunities in the statute. Never during his claim process did the questionnaire ask Mr. Bringman the relevant question, which, so far as one can determine from the Department's testimony, is whether Mr. Bringman had "separated," but which, in reality, should really be whether he quit for good cause.

While, to be material, information need not actually affect the outcome of the determination and while the Department "should be able to assume that benefit claimants are reporting all the information solicited from them fully and accurately," Mr. Bringman was never given an opportunity even to fully explain the nature of his constructive termination, or, in the words of the statute, his quit for good cause. *Meyer*, 99 Idaho at 760. In fact, the option he chose, in good faith believing it to be correct, was the only option on the questionnaire's list that did not offer an opportunity for explanation. Not having had the opportunity at the claim stage, at Mr. Bringman's very first opportunity to relay to the Department the nature of his termination, an interview with the Department, he fully disclosed his situation and the reason behind his informed choice of "laid off for lack of work." Because the question on the online form was not a reflection of the criteria the Department is required to use in making eligibility determinations but, rather, an introductory question intended to lead into further fact finding, Mr. Bringman's response to the question which the Department claims was a misrepresentation was not material.

E. The Department's form does not accurately reflect the determination it is required to make by the statute, and, in this case, the factual record is unreliable.

While the Department must make a determination regarding a claimant's eligibility for unemployment benefits under Idaho Code § 72-1366, the form it uses to automate this process does not accurately reflect the criteria for eligibility set forth in the statute and is unclear. While the Department and the Commission have tried to shoehorn Mr. Bringman's selection from a multiple-

choice form into a material, willful misstatement, Mr. Bringman was actually only informed regarding the answers he was to provide and the level of truthfulness that was expected from him. The Department, however, assigns to claimants not an expectation of truthfulness, but an expectation of legal accuracy. This is not the appropriate standard for administration of unemployment claims, where a claimant is typically unrepresented by counsel and, having just lost gainful employment, in no position to afford legal counsel.

As made clear in the Commission's Decision, the factual record as it has been set forth in order to disqualify Mr. Bringman is unreliable. Mr. Bringman's employer testified without foundation that Mr. Bringman was at work following the write-up, while Mr. Bringman gave a firsthand account that he was not. Tr p. 43, L. 21-25; p. 44; p. 45, L. 1-14; p. 50, L. 15-17. Later, the Commission adopted Mr. Bringman's statement only that "he was 'not laid off for lack of work,'" omitting the rest of that same statement, in which Mr. Bringman qualified that statement with "by [the Department's] definition." R p. 41. Using only this small part of Mr. Bringman's statement, the Commission extrapolated that it could "appl[y] Claimant's logic" to conclude that he should have known that none of the options given him was accurate. *Id.* The record leaves unresolved too much ambiguity to rely on the Department's accusations that Mr. Bringman misrepresented his termination in order to receive benefits to which he was not entitled.

From the standpoint of serving the policy behind Idaho's unemployment law and efficient administration of that law, the Department has failed. It has obscured what could otherwise be a simple question of truthfulness. Where one straightforward question would suffice, the Department's form has proposed a multitude of questions implying some very complex legal analysis. Not only for Mr. Bringman, but for the numerous other Idahoans out of work and seeking

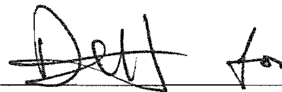
to weather a personal economic storm, this scenario beckons the Court to analyze the way in which Idaho determines eligibility for unemployment benefits.

VI.

CONCLUSION

Based upon the foregoing, the Appellant respectfully requests this Court reverse parts III, III (*sic,* should be "IV") and IV of the Commission's Decision and Order.

DATED this 23rd day of November, 2012.

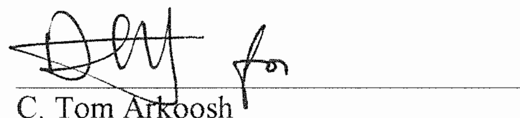


C. Tom Arkoosh
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of November, 2012, I served two true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Tracey K. Rolfsen Deputy Attorney General Idaho Department of Labor 317 W. Main St. Boise, ID 83735	X 	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	X 	United States Mail, Postage Prepaid Overnight Courier Via Facsimile Hand Delivered



C. Tom Arkoosh