

12-31-2013

Boyd-Davis v. Macomber Law Clerk's Record v. 1 Dckt. 41523

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BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS,

Claimant/Appellant,

v.

MACOMBER LAW, P.L.L.C.,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

Vol. 1 of 2

SUPREME COURT NO. 41523

LAW CLERK

AGENCY RECORD

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

For Claimant/Appellant

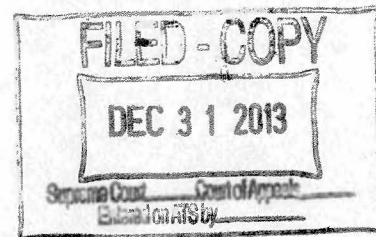
Terri L. Boyd-Davis
12738 N Strahorn Rd
Hayden, ID 83835

For Employer/Respondent

Macomber Law, P.L.L.C.
PO Box 102
Coeur d'Alene, ID 83816-0102

For Respondent

Tracey K. Rolfsen
Deputy Attorney General
317 W. Main Street
Boise, ID 83735



41523

COPY

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LIST OF EXHIBITS

HEARING TRANSCRIPT taken on April 18, 2013 will be lodged with the supreme court.

EXHIBITS ADMITTED into record before IDAHO DEPARTMENT OF LABOR

- Exhibit 1.....Notice of Telephone Hearing, mailed April 9, 2013 (3 pages)
- Exhibit 2Important Information About Your Hearing Read Carefully (2 pages)
- Exhibit 3.....Idaho Department of Labor Correspondence Regarding Review Process (1 page)
- Exhibit 4.....REA Summary (2 pages)
- Exhibit 5.....Eligibility Determination Unemployment Insurance Claim (2 pages)
- Exhibit 6.....Claimant’s Protest of Determination (2 pages)
- Exhibit 7.....Claimant Profile Data (1 page)

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

TERRI L. BOYD-DAVIS,)
SSN: [REDACTED])
Claimant)
vs.) **DOCKET NUMBER 3509-2013**
MACOMBER LAW, P.L.L.C.,) **DECISION OF APPEALS EXAMINER**
Major Base Employer)
and)
IDAHO DEPARTMENT OF LABOR.)
_____)

DECISION

Benefits are **DENIED** effective March 10, 2013 through March 30, 2013. The claimant failed to provide information pertaining to the on-line eligibility review, according to §72-1366 (1) of the Idaho Employment Security Law.

The Eligibility Determination dated March 19, 2013, is hereby **AFFIRMED, AND MODIFIED** to include an end date to the disqualification.

HISTORY OF THE CASE

The above-entitled matter was heard by Janet C. Hardy, Appeals Examiner for the Idaho Department of Labor, on April 18, 2013, by telephone in the City of Boise, pursuant to §72-1366 (1) of the Idaho Employment Security Law.

The claimant appeared for the hearing and testified.

The Department was represented by Kim Roby, assistant manager, who testified.

Exhibits #1 through #7 were entered into and made a part of the record.

ISSUE

The issue before the Appeals Examiner is whether the claimant failed to provide information pertaining to the on-line eligibility review, according to §72-1366 (1) 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 was mailed a letter on March 6, 2013, requesting her to provide her work search documentation for the week ending March 2, 2013. The claimant was given a deadline of 03/15/2013 to provide the requested information, or her benefits would be denied.
2. When the claimant had not provided the requested information by the deadline, the Department issued an Eligibility Determination denying the claimant benefits effective March 10, 2013.
3. The claimant asserts she did not provide the information because she did not receive the letter requesting her to provide her work search contacts. The claimant was unaware of the request until she received the Eligibility Determination denying benefits.
4. The claimant provided the information on April 1, 2013, and benefits were resumed effective March 31, 2013. The claimant's work search contacts were appropriate.

AUTHORITY

Idaho Code §72-1366 (1) of the Idaho Employment Security Law provides that in order to be eligible for benefits, a claimant must make a claim for benefits and provide all necessary information pertinent to eligibility.

CONCLUSIONS

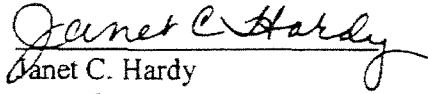
The claimant was denied benefits for her failure to timely provide information regarding her work search contacts. The request was sent to her by mail to her last known address and informed her that the information must be provided by March 15, 2013. The claimant did not provide the requested information by the deadline, and as a result, the claimant was denied benefits.

The claimant asserts that she did not receive the letter. Under Idaho law, service by mail is deemed complete on the date of mailing. Idaho Code §72-1368 (5) (2004). In Striebeck v. Employment Security Agency, 83 Idaho 531, 366 P.2d 589, (1961), the Idaho Supreme Court held "[i]t is clear that the legislature intended that for the purpose of perfecting an appeal as provided in §72-1368, service of a notice of determination or redetermination shall be regarded and adjudged complete when delivered to the person being served on the date of mailing if mailed to such person at his last known address." Such presumptions also apply here.

The Court has specifically interpreted the word "deemed" in §72-1368 (5) as creating a "conclusive presumption," however that presumption is rebuttable, if a party can establish that there was a defect in the notice or that the determination was not delivered because of delay or error by the U.S. Postal Service. There is nothing in the record to support a finding that the notice to the claimant was defective. The claimant admitted that the notice was correctly addressed, but asserts only that it was not received.

The presumption that the notice was mailed and received is rebuttable, nevertheless, a party's unsupported argument that he or she did not receive it is insufficient to rebut that presumption. Striebeck v. Employment Security Agency, 83 Idaho 531, at 536, 366 P.2d 589, 591 (1961).

There is nothing in the record that would lead the Appeals Examiner to the conclusion that the claimant was the victim of an error of the U.S. Postal Service. As the claimant did not schedule provide the information by the deadline benefits are denied for the weeks immediately preceding the date in which the claimant provided the requested information.


Janet C. Hardy
Appeals Examiner

Date of Mailing April 19, 2013

Last Day To Appeal May 3, 2013 ²⁰¹³ ~~30213~~ RP

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.

IDAHO DEPARTMENT OF LABOR
APPEALS BUREAU
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 April 19, 2013, a true and correct copy of **Decision of Appeals Examiner** was served by regular United States mail upon each of the following:

TERRIL BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

MACOMBER LAW PLLC
4908 E SHERMAN AVE STE 316
COEUR D ALENE ID 83814

IDAHO DEPARTMENT OF LABOR
ATTN: CLAIMS SPECIALIST
317 W MAIN ST
BOISE ID 83735-0700



The request was aborted: operation has timed out.

Quick Load

Docket Number: Year: 2013 Higher Court: Appeal Source: UI - Basis Load

Appeal Information

Docket Number: 3509 **Year:** 2013 **SSN:** [REDACTED] **Name:** BOYD-DAVIS, TERRI L [Edit](#)

Court Level: Appeal **Date Filed:** 03/29/2013 **Due Out Date:** 04/26/2013

Appellant: Claimant **Program:** REG - UI **Related To Docket:**

Status: Scheduled **Local Office:** 0090 - Kootenai County Job Service

Multiple Appeals: **Tax Due:** \$0.00 **Penalty:** \$0.00 **Interest:** \$0.00

Tax Rep Name:

Setup By: **Setup Date:** [Setup](#)

Scheduled By: tgregory **Scheduled Set On:** 04/08/2013

Participants

Type	Name	Address	City	State	Zip	Phone	Fax Phone
Claimant	BOYD-DAVIS, TERRI L	12738 N. Strahorn Rd.	Hayden	ID	83835	(208) 762-4296	
Major Base Employer	MACOMBER LAW PLLC	1900 NW BLVD SUITE 206	COEUR D'ALENE	ID	83814	(208) 664-4700	
Respondent	Idaho Department of Labor	Attn: Claims Specialist 317 W Main St	Boise	ID	83735-0700		

Issues

Issue ID	Level	Sequence	Primary	Issue	Status	Determination	Decision	Resolution
961		0	Primary	REA Failure to provide information	Deny	Deny	Affirmed	961

Schedule Information

Examiner	Date	Start	End	MeetingID	Status
Janet Hardy	Apr 18, 2013	2:30 PM	3:30 PM		Past

Notes

Note	UpdatedBy	LastUpdated
Per call from employer, changed address information. Made change in application.	DOE\cphillip	5/1/2013 12:21:15 PM
IC Protest received; processed as needed.	DOE\tgregory	5/7/2013 9:41:41 AM

Documents

Add Document
 NTH
 Dismissal
 Select a Document to Build...
 [Ones](#) [AX](#) [UI Tasks](#)

FROM: Terri L. Boyd-Davis, Claimant/Appellant
 12738 N. Strahorn Rd.
 Hayden, ID 83835
 (208) 659-5967
 Email: terriboyddavis@me.com

FILED

MAY - 3 2013

INDUSTRIAL COMMISSION

TO: Idaho Industrial Commission
 Judicial Division, IDOL Appeals
 P.O. Box 83720
 Boise, ID 83720-0041
 Via FAX: (208) 332-7558

DATE: May 3, 2013

RE: APPEAL OF DECISION OF APPEALS EXAMINER - Docket No. 3509-2013

The Decision of the Appeal Examiner issued April 19, 2013 in this matter should be overturned and Appellant/Claimant Terri Boyd-Davis's benefits from March 10, 2013 through March 30, 2013 should be approved and reinstated for two important reasons. First and foremost, the denial of benefits to the Claimant, who was verifiably eligible for benefits, defeats the stated purpose of the Idaho Employment Security Law, which is "to pay benefits for periods of unemployment . . . for workers who are unemployed through no fault of their own." Secondly, it should be overturned because the Appeals Examiner wrongly applied and relied upon law that deals exclusively with appellate standards and does not address the issue that is central to this case.

I. Facts.

The Appellant/Claimant in this matter, Terri L. Boyd-Davis ("Claimant"), was laid off on January 27, 2013 from the position she held for over four years as a Paralegal due to a slowdown in business in her employer's law practice. After her layoff, the Claimant made a claim for benefits with the Idaho Department of Labor ("DOL" or "Department"). She qualified for benefits and began receiving them. She diligently pursued reemployment in her field and on April 12, 2013, less than three months after she was laid off, she obtained full-time employment as a Legal Assistant in a position well-suited to her skills and her over 27 years of experience in the legal field. During the time she was unemployed, she received benefits for five weeks but did not receive benefits for three weeks, which is the issue central to this appeal.

The issue arose when the Claimant received an Eligibility Determination Decision dated March 19, 2013 (Exhibit 5 to the Notice of Telephone Hearing) informing her that she became "ineligible for benefits effective 03/10/2013." This decision stated that "if [she] disagree[d] with this determination, [she had] fourteen (14) days from the date of mailing to file a protest." The Claimant filed a Protest of Determination on March 27, 2013. On March 29, 2013, the Claimant received an email from the DOL (email address: KCmail@labor.idaho.gov), which stated the following:

We received your letter of protest of determination for failure to due [sic] your online eligibility review that was due by 03/15/2013 by 5:00PM. On March 5, 2013, we mailed you a letter requesting that you provide your work search contacts that you had made for the week ending 03/02/2013 since when you reported for that week you stated that you looked for work per your work seeking requirements. Failure to complete this caused your indefinite denial until you provide those work search contacts for the week ending 03/02/2013. Our office phones are currently closed so please contact us at 208-457-8789 and press option 1 to speak to a Claims Specialist on Monday, April 1, 2013 to provide your work search contacts for the week ending 03/02/2013.

As requested, the Claimant phoned the DOL on April 1, 2013 and provided the information requested (her work search contacts). The Claimant's benefits were then restored effective the week ending April 6, 2013, but she did not receive any benefits for the three weeks prior to that.

A telephonic hearing was held on April 18, 2013. Claimant testified that she did not receive the letter (Exhibit 3 to the Notice of Telephonic Hearing) that was purportedly mailed to her by the DOL on March 6, 2013. The letter at issue is not signed by anyone nor does it indicate who purportedly mailed it. It does not contain a certificate of mailing. It appears to be a mass-produced letter from the DOL. The DOL representative at the hearing, Kim Roby, testified that she was not the person who mailed the letter. There was no testimony from anyone at the hearing who actually claimed to have mailed this letter.

During the telephonic hearing, the Claimant explained that if she had received the letter, there would have been no reason why she would not have provided the Department with the requested information by the date requested and that she had, in fact, provided the DOL with the necessary information once she realized this was required of her as requested in the March 29, 2013 email she received from the DOL. As stated in the Decision's Findings of Fact, the information the Claimant provided on April 1, 2013 concerning her work search contacts "were appropriate."

The Claimant is a hard-working person who has never lived off of or relied upon government benefits, and she is offended and appalled that at this one time in her life when she was legitimately laid off from work that she finds herself in a struggle with the Idaho DOL over receiving benefits that she needed and was legitimately entitled to receive.

II. Issue that was before the Appeals Examiner at the telephonic hearing.

As stated in the Decision of Appeals Examiner dated April 19, 2013, "[t]he issue before the Appeals Examiner is whether the claimant failed to provide information pertaining to the on-line eligibility review, according to §72-1366 (1) of the Idaho Employment Security Law."

The issue is not that the Claimant did not provide the requested information nor is it that the information provided was not appropriate. The issue is that the Claimant did not provide the

information by the date of March 15, 2013, as requested in the March 6, 2013 letter, which Claimant asserts she did not receive.

III. The Appeals Examiner relied upon sections of Idaho Code and Idaho case law that concern appellate procedure and are inapplicable to the issue of this case.

The Appeals Examiner relies upon Idaho Code § 72-1368(5) and the Idaho Supreme Court case of *Striebeck v. Employment Security Agency*, 83 Idaho 531, 366 P.2d 589 (1961) in finding that the March 6, 2013 letter which was purportedly mailed to the Claimant by the DOL and that requested that the Claimant provide information requested therein to the Department by March 15, 2013, was “deemed” received by the Claimant, and that Claimant’s benefits were thereby properly denied by the DOL. Applying that statute and that particular case to the facts of this case is misplaced because that section of the Idaho Code and the *Striebeck* case deal specifically and exclusively with appellate procedure and the sole issue of this case is “whether the claimant failed to provide information pertaining to the on-line eligibility review,” which has nothing to do with appellate procedure.

- A. *Idaho Code § 72-1368(5) does not apply to letters from the DOL to claimants requesting information; rather this section of Idaho law applies solely and specifically to “notice of determinations, revised determinations, redeterminations, special redeterminations and decisions.”*

The Appeal Examiner states under “Issue” in her Decision that the section of the Idaho Code that concerns the issue at hand in this case is Idaho Code § 72-1366, which is entitled “Personal eligibility conditions.” She specifically stated that the “issue before the Appeals Examiner is whether the claimant failed to provide information pertaining to the on-line eligibility review, according to § 72-1366 (1) of the Idaho Employment Security Law.” This section states: “The personal eligibility conditions of a benefit claimant are that [t]he claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility.” This section does not require that such information be provided within a certain time period.

Although the section of the Idaho Code that applies to the issue at hand is Section 72-1366 (“Personal eligibility conditions”), the Appeal Examiner wrongly applied the standards of Section 72-1368 (“Claims for benefits -- appellate procedure -- limitation of actions”) to this case.

- B. *The Striebeck case was wrongly applied to the issue of the case at hand because it specifically and exclusively deals with appellate procedure and its facts are distinguishable from the facts of this case.*

The Claims Examiner cites to *Striebeck* to support her conclusion that “service by mail is deemed complete on the date of mailing.” However, *Striebeck* specifically deals with the Claimant-Appellant’s failure to file an appeal of the Employment Security Agency’s “Redetermination” decision. Further, in that case, the decision specifically stated that “[t]here is no provision under the Employment Security Law for waiving the 14-day time limit for protesting the Redetermination of the Agency. Failure of the claimant to file her appeal within

the statutory time limit leaves the Appeals Examiner without jurisdiction to rule upon the merits of the case.” Additionally, the Claimant-Appellant’s defense in the *Striebeck* case was not that she had never received the “Redetermination” decision but rather that “[she] did not understand that [she] was to report to request an appeal within 14 days.”

Unlike the instant case, in *Striebeck*, the Court stated that “there is no contention by appellant that she did not receive such decision within the 14 day period provided in said statute.” The Court then correctly applied the law “for the purpose of perfecting an appeal,” stating:

It is clear the legislature intended that *for the purpose of perfecting an appeal* as provided in said § 72-1368 *service of a notice of determination or redetermination shall be regarded and adjudged as complete* when delivered to the person being served or on the date of mailing if mailed to such person at his last known address. It is equally clear that the legislature did not intend to leave the right of appeal open beyond the 14 day period provided by said statute.

(Emphasis added).

In *Striebeck*, the Idaho Supreme Court affirms that it “has repeatedly held that the statutory requirements as to the method and manner of *taking an appeal* are mandatory and the filing and service of *notice of appeal* within the time and in the manner prescribed by statute are jurisdictional.” (Emphasis added).

This is only relevant in the case of appeals. It is not relevant to letters sent to claimants by the DOL. Not only is there no period provided by statute in which a claimant of DOL benefits must respond to a letter requesting information; in the case at hand, there is no reason for holding to such rigid standards. Unlike in the case of an appeal, here we have no mandatory statutory requirements that do not allow deviation. Quite the contrary is true. Here it is discretionary whether benefits are denied. Under the section titled “Law” in the Eligibility Determination dated March 19, 2013, it cites to Rule 425.07 regarding “Requirement to Provide Information.” It states “[i]f a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant *may* be denied benefits until the information is provided.”

Further, in this case, the DOL has provided no proof that the March 6, 2013 letter was mailed to the Claimant. The letter is unsigned, does not indicate who purportedly mailed it, and it has no certificate of mailing. The DOL’s representative at the telephonic hearing, Kim Roby, testified that she was not the one who purportedly mailed the letter. There is no clear evidence that the letter was mailed and even if it was mailed, there is no proof it was received by the Claimant.

IV. Denying the Claimant her benefits to which she was legitimately entitled defeats the purpose of the Idaho Employment Security Law and the Claimant's benefits should, therefore, be reinstated.

Although, in general, the *Striebeck* case does not apply to the case at hand, there is one important point made by the Idaho Supreme Court in that case that does apply to the case at hand and which should be applied in this matter. The Court stated: "It is true that *the Employment Security Law must be liberally construed to the end that its purpose be accomplished* and that in construing a statute the primary function is to ascertain and give effect to the intention of the legislature as expressed in the statute." (Emphasis added).

The Idaho Employment Security Law declares in Section 72-1302 of the Idaho Code that the public policy of this state is as follows:

Economic insecurity due to unemployment is a serious threat to the well-being of our people. Unemployment is a subject of national and state concern. This chapter addresses this problem by encouraging employers to offer stable employment and by systematically accumulating funds during periods of employment to pay benefits for periods of unemployment. The legislature declares that the general welfare of our citizens requires the enactment of this measure and sets aside unemployment reserves to be used for workers who are unemployed through no fault of their own.

The Claimant in this case is one of the citizens of this beautiful state. She was unemployed for over two months through no fault of her own. Unemployment reserves were set aside for her just as much as they were for others in her position. Her welfare should matter to this state. It is wrong for the State of Idaho to deny her benefits. Doing so defeats the stated purpose of the Employment Security Law.

The proper question that the IDOL Appeals Bureau should consider in this appeal is: **What is the purpose of Section 72-1366(1) of the Idaho Employment Security Law?**

Idaho Code § 72-1366 (1) provides simply and plainly that "[t]he personal eligibility conditions of a benefit claimant are that [t]he claimant shall have made a claim for benefits and provided all necessary information pertinent to eligibility."

In this case, it is clear that the Claimant made a claim for benefits and that she qualified for those benefits. It is also clear that the Claimant provided the DOL with all the necessary information pertinent to her eligibility, including the information requested by the DOL in its March 6, 2013 letter to her. Finally, it is clear that the information she provided (her work search contacts) "were appropriate." Nowhere in Section 72-1366 does the statute state that a claimant will be denied benefits if not provided within a specific period of time. The Appeals Examiner has wrongly applied the standards pertinent to an appeal under Section 72-1368.

V. Conclusion.

The Appeal Examiner clearly applied the wrong standards to this matter. The Appellant/Claimant Terri Boyd-Davis is entitled to receive unemployment benefits for the period of March 10, 2013 through March 30, 2013. The Idaho Supreme Court has confirmed that the Employment Security Law must be liberally construed to the end that its purpose be accomplished. To deny benefits to the Claimant in this matter is to defeat the very purpose of this law.

Therefore, the April 19, 2013 Decision of the Appeals Examiner should be overturned and the Claimant's benefits for the period in question should be approved and restored to the Claimant.

Respectfully submitted,



Terri L. Boyd-Davis
Claimant/Appellant

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRIL BOYD-DAVIS,

SSN: [REDACTED]

Claimant,

v.

MACOMBER LAW, P.L.L.C.,

Major Base Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL# 3509-2013

NOTICE OF FILING
OF APPEAL

FILED

MAY 10 2013

INDUSTRIAL COMMISSION

PLEASE TAKE NOTICE: The Industrial Commission has received an appeal from a decision of an Appeals Examiner of the Idaho Department of Labor. A copy of the appeal is enclosed, along with a copy of the Commission's Rules of Appellate Practice and Procedure.

PLEASE READ ALL THE RULES CAREFULLY

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

The Commission will make its decision in this appeal based on the record of the proceedings before the Appeals Examiner of the Idaho Department of Labor.

INDUSTRIAL COMMISSION

POST OFFICE BOX 83720

BOISE IDAHO 83720-0041

(208) 334-6024

Calls Received by the Industrial Commission May Be Recorded

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of May, 2013 a true and correct copy of the **Notice of Filing of Appeal and compact Disc of hearing** was served by regular United States mail upon the following:

APPEAL:

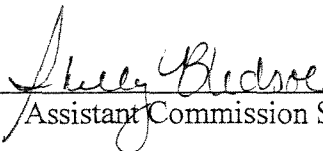
MACOMBER LAW, P.L.L.C.
4908 E. SHERMAN AVE. STE. 316
COEUR D' ALENE, ID 83814

APPEAL AND DISC:

TERRI L. BOYD-DAVIS
12738 N. STRAHORN RD.
HAYDEN, ID 83835

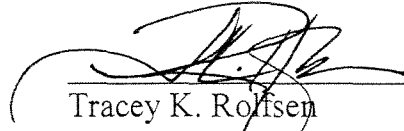
DEPUTY ATTORNEY GENERAL
IDAHO DEPARTMENT OF LABOR
STATE HOUSE MAIL
317 W MAIN STREET
BOISE ID 83735

sb



Assistant Commission Secretary

DATED this 16th day of May, 2013.



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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF APPEARANCE,
was mailed, postage prepaid, this 16th day of May, 2013, to:

TERRI L. BOYD-DAVIS
12738 N STAHORN RD
HAYDEN, ID 83835

MACOMBER LAW, P.L.L.C
4908 E SHERMAN AVE STE 316
COEUR D ALENE, ID 83814



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRILL BOYD-DAVIS,
SSN [REDACTED]

Claimant,

v.

MACOMBER LAW, P.L.L.C.,

Major Base Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 3509 -2013

DECISION AND ORDER

FILED

JUL 25 2013

INDUSTRIAL COMMISSION

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

Claimant, Terri L. Boyd-Davis, appeals to the Industrial Commission a Decision issued by Idaho Department of Labor (“IDOL” or “Department”) ruling her ineligible for unemployment benefits. The Appeals Examiner concluded that Claimant is ineligible for unemployment benefits effective March 10, 2013, through March 30, 2013, because she failed to complete an online review of her work search activities as directed by the Department.

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, 787 P.2d 263 (1990). The evidentiary record in this case consists of the audio recording of the hearing the Appeals Examiner conducted on April 18, 2013, and the Exhibits [1 through 7] admitted during that proceeding.

FINDINGS OF FACT

The evidence in the record supports the Findings of Fact as set forth in the Appeals Examiner's Decision. Therefore, they are adopted in their entirety.

DISCUSSION

IDOL notified Claimant by letter dated March 6, 2013, that she had been selected for an audit of her compliance with her work-seeking requirements. To comply with the audit, the Department directed Claimant to complete an eligibility review on the Internet by March 15, 2013. (Exhibit 3.) Claimant did not complete the review. Therefore, IDOL issued an Eligibility Determination ruling Claimant ineligible for unemployment benefits until she complied. (Exhibit 5.)

Claimant maintains that she did not receive the Department's letter regarding the online audit. Therefore, she had no idea that IDOL was seeking additional information until she received the Eligibility Determination. Claimant explained that after she received the Determination, she received an email message from IDOL directing her to call in. When she did so on April 1, 2013, she provided the work search information IDOL wanted. (Exhibit 4.) Therefore, IDOL restored Claimant's benefits effective March 31, 2013. (Audio Recording.) Claimant is seeking the restoration of her benefits effective March 10, 2013, through March 30, 2013.

As part of the personal eligibility requirements for unemployment benefits, Idaho Code § 72-1366(1) requires that a claimant provide all necessary information pertinent to eligibility. Idaho Code § 72-1366(4) requires that a claimant be "able to work, available for suitable work, and seeking work." To ensure that a claimant meets all of the requirements necessary to qualify for unemployment benefits, including compliance with work-seeking requirements, IDOL has promulgated IDAPA 09.01.30.425.07 stating that a

claimant who fails to provide the Department with all necessary information relevant to determining that claimant's eligibility shall be denied benefits until such information is provided.

The real issue in this case is whether Claimant can be held accountable for failing to comply with the Department's request when she did purportedly not receive the Department's letter regarding that request. Idaho Code § 72-1368(5) defines service. "A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing." The Department's letter was mailed to Claimant at her address of record.

Claimant contends that Idaho Code § 72-1368(5) only applies to Determinations and Decisions and therefore does not cover the *letter* dated March 6, 2013 regarding the audit. (Claimant's Appeal, filed May 3, 2013.) Claimant advocates a very literal interpretation of Idaho Code § 72-1368(5) definition of service. Her interpretation would imply that only Decisions and Determinations are entitled to the presumption of receipt by the intended party if sent to the address of record. Any other official correspondence would not be entitled to that same presumption. Claimant's interpretation does not reflect the reality of the Department's day-to-day business processes.

The "letter" IDOL sent to Claimant informing her that she had been selected for an audit of her work seeking activities was prepared and mailed using the same process that IDOL uses for preparing and mailing Determinations. There is no reason to accord a more stringent standard for "service" of a "letter" containing a deadline and consequences that is applied to Determinations and Decisions.

Moreover, Claimant has the burden of proving 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). Claimant admits that she received the Eligibility Determination IDOL mailed to her on March 19, 2013, at her address of record before the expiration of the protest period. Claimant points out that she prepared her protest on March 27, 2013. (Audio Recording.) There is no evidence in this record to suggest that Claimant has encountered difficulties receiving other documents IDOL has mailed to her. A preponderance of the evidence indicates the letter IDOL mailed on March 6, 2013, was delivered to Claimant's address of record.

The evidence this record establishes that Claimant failed to complete the online audit of her job-seeking activities in the time frame prescribed by the Department. Because Claimant did not provide the information as directed by the Department in a timely manner, Claimant is ineligible for unemployment benefits effective March 10, 2013, through March 30, 2013.

CONCLUSION OF LAW


Claimant did not provide information as directed by IDOL, as required by IDAPA 09.01.30.425.07 and is therefore ineligible for unemployment benefits effective March 10, 2013, through March 30, 2013.

ORDER

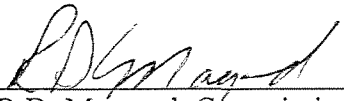
Based on the foregoing analysis, the Decision of the Appeals Examiner is AFFIRMED. Claimant is ineligible for unemployment benefits effective March 10, 2013, through March 30, 2013, as a result of her failure to comply with the Department's request for information in a timely manner.

DATED this 25th day of July 2013.

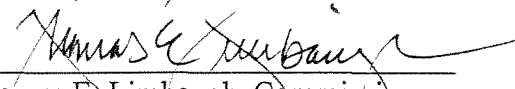
INDUSTRIAL COMMISSION



Thomas P. Baskin, Chairman

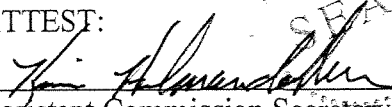


R.D. Maynard, Commissioner

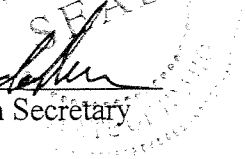


Thomas E. Limbaugh, Commissioner

ATTEST:



Assistant Commission Secretary



CERTIFICATE OF SERVICE

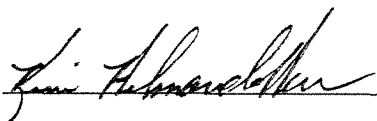
I hereby certify that on the 25th day of July 2013, a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

TERRI L BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

MACOMBER LAW PLLC
4908 E SHERMAN AVE STE 316
COUER D'ALENE ID 83814

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

kh



BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRIL BOYD-DAVIS,
SSN: [REDACTED]

Claimant,

v.

MACOMBER LAW, P.L.L.C.,

Major Base Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 3509-2013

MOTION FOR RECONSIDERATION
OF DECISION AND ORDER

FILED
AUG 14 2013
INDUSTRIAL COMMISSION

Claimant TERRIL BOYD-DAVIS (“Claimant”) brings this Motion for Reconsideration of the Decision and Order of the Industrial Commission filed on July 25, 2013 pursuant to Rules of Appellate Practice and Procedure Under the Idaho Employment Security Law Rule 8(F). This motion is brought to address what Claimant asserts to be a misinterpretation of law by the Industrial Commission in its decision.

Introduction

In its Decision, the Industrial Commission takes issue with Claimant’s “very literal interpretation of Idaho Code §72-1368(5),” apparently believing that it is appropriate to interpret Idaho statutes by reading into them something other than what they say in order to “reflect the reality of the [Idaho] Department[of Labor]’s day-to-day business processes.” The Claimant argues herein that her “very literal interpretation” of the statute is the proper interpretation under Idaho law.

Argument

Claimant argued in her Appeal of Decision of Appeals Examiner to the Idaho Department of Labor (“IDOL” or “Department”) that in determining whether she should receive benefits for the three weeks in question that the IDOL should properly consider the purpose of the Idaho Employment Security Law and that that law should “be liberally construed to the end that its purpose be accomplished” as urged by the Idaho Supreme Court in the case of *Striebeck v. Employment Security Agency*, 83 Idaho 531, 366 P.2d 589 (1961).

She emphasized that under the section titled “Law” in the Eligibility Determination dated March 19, 2013 that she received from the IDOL, it cited to Rule 425.07 entitled “Requirement to Provide Information.” Therein it stated that “[i]f a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant *may* be denied benefits until the information is provided.” Her point was that with the use of the word “may,” it is not a requirement that she be denied benefits and that the IDOL should not hold to such a harsh and rigid standard, thereby defeating the purpose of the Idaho Employment Security Law as stated in Idaho Code section 72-1302, as follows:

Economic insecurity due to unemployment is a serious threat to the well-being of our people. Unemployment is a subject of national and state concern. This chapter addresses this problem by encouraging employers to offer stable employment and by systematically accumulating funds during periods of employment to pay benefits for periods of unemployment. The legislature declares that the general welfare of our citizens requires the enactment of this measure and sets aside unemployment reserves to be used for workers who are unemployed through no fault of their own.

The Department, however, wants the Claimant to somehow *prove* the March 6, 2013 letter was not delivered to her, an impossible feat. How does one prove mail was *not delivered*? The Department seemingly wants to ignore the reality that mail is not always delivered as intended and to instead choose to essentially call the Claimant a liar, thereby denying her

benefits. The Department takes its stance to such an extreme that it misinterprets a section of the Idaho Code in an attempt to force Idaho law to apply to the facts of this case when it does not apply.

In its Decision, the Industrial Commission affirmed the IDOL's Decision by also applying incorrect standards to interpret statutes. It provides no legal basis for doing so. As Claimant argues herein, the Idaho Supreme Court makes clear that the Claimant's "very literal interpretation" of I.C. 72-1368(5) is the correct interpretation despite the fact that it may not "reflect the reality of the Department's day-to-day business processes." The Court states that "[i]t is the duty of the courts to interpret the meaning of legislative enactments without regard to the possible results." *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962).

In its Decision, the Industrial Commission states:

Claimant contends that Idaho Code §72-1368(5) only applies to Determinations and Decisions and therefore does not cover the *letter* dated March 6, 2013 regarding the audit. Claimant advocates a very literal interpretation of Idaho Code §72-1368(5) definition of service. Her interpretation would imply that only Decisions and Determinations are entitled to the presumption of receipt by the intended party if sent to the address of record. Any other official correspondence would not be entitled to that same presumption. Claimant's interpretation does not reflect the reality of the Department's day-to-day business processes.

The Industrial Commission provides no legal basis for interpreting this statute in the way that "reflect[s] the reality of the Department's day-to-day business processes" rather than by its plain and simple meaning.

The statute in question, Idaho Code §72-1368(5), states:

All interested parties shall be entitled to prompt service of notice of determinations, revised determinations, redeterminations, special redeterminations and decisions. A notice shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

The Industrial Commission takes issue with the Claimant's contention that this section of the Idaho Code "only applies to Determinations and Decisions." It is not the Claimant who wrote this section of the Code, however, that *clearly* states that it applies to *notices* and is so specific that it then immediately identifies by name which five *notices* it covers ("determinations, revised determinations, redeterminations, special redeterminations and decisions") and then states that "a *notice* shall be deemed served...". The Idaho Legislature wrote this section of the law and its meaning is abundantly clear.

While there are numerous Idaho cases that make it clear that unambiguous statutes should be interpreted by their plain and clear language, a case that clearly addresses the issue here is found in *Matter of Permit No. 36-7200*, 121 Idaho 819 (1992). Therein, the Supreme Court states that "[t]he fundamental issue in this litigation is the interpretation of I.C. § 67-4308." In that case, two governmental agencies, the Idaho Department of Water Resources (IDWR) and the Idaho Department of Parks and Recreation (IDPR) attempted to force a meaning upon the statute that was contrary to its plain meaning, much as the Industrial Commission does in the instant case. The Idaho Supreme Court discussed the rules of construction of statutory intent to clarify the agencies' error:

The agencies argue that the statute is ambiguous and thereby seek to engage us in the application of various rules of construction in order to determine legislative intent. **It is a basic rule of statutory construction that, unless the result is palpably absurd, we must assume that the legislature means what is clearly stated in the statute.** *Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); *Miller v. State*, 110 Idaho 298, 715 P.2d 968 (1986); *State Dep't of Law Enforcement v. One 1955 Willys Jeep*, 100 Idaho 150, 595 P.2d 299 (1979). It is also well established that statutes must be interpreted to mean what the legislature intended the statute to mean, *Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); *Miller v. State*, 110 Idaho 298, 715 P.2d 968 (1986); 852*852 *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984), and the statute must be construed as a whole. *Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); *Liefeld v. Johnson*, 104 Idaho 357, 659 P.2d 111

(1983); *Sherwood & Roberts Inc. v. Riplinger*, 103 Idaho 535, 650 P.2d 677 (1982). **Statutory interpretation always begins with an examination of the literal words of the statute.** *Local 1494 of the Int'l Ass'n of Firefighters v. City of Coeur d'Alene*, 99 Idaho 630, 586 P.2d 1346 (1978). In so doing, every word, clause and sentence should be given effect, if possible. *Wright v. Willer*, 111 Idaho 474, 725 P.2d 179 (1986); *University of Utah Hosp. & Medical Center v. Bethke*, 101 Idaho 245, 611 P.2d 1030 (1980). **The clearly expressed intent of the legislature must be given effect and there is no occasion for construction where the language of a statute is unambiguous.** *Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); *Ottesen ex rel. Edwards v. Board of Comr's of Madison County*, 107 Idaho 1099, 695 P.2d 1238 (1985). **Finally, when construing a statute, its words must be given their plain, usual and ordinary meaning.** *Sherwood v. Carter*, 119 Idaho 246, 254, 805 P.2d 452, 460 (1991); *Walker v. Hensley Trucking*, 107 Idaho 572, 691 P.2d 1187 (1984).

Id. at 851-852. (Emphasis added.)

The Supreme Court upheld the district court's ruling, finding the lower court was correct in interpreting the statute according to its plain language.

If the Industrial Commission prefers that the Claimant bring this issue before the Idaho Supreme Court and ask that it make a determination as to whether Idaho Code §72-1368(5) means what it says (Claimant's interpretation) or whether meaning should be read into it as the Industrial Commission claims, then she will do so. However, the Industrial Commission may first wish to consider the opinion expressed by the Supreme Court in the *Matter of Permit No. 36-7200*, which should clarify the issue:

While the plain words of the statute defy the agencies' concern over the purpose of the statute, the purpose of an unambiguous statute is not the concern of the courts when attempting to interpret a statute. This Court has stated that when the language of a statute is definite, courts must give effect to that meaning whether or not the legislature anticipated the statute's result. *Unity Light & Power Co. v. Burley*, 83 Idaho 285, 361 P.2d 788 (1961). Moreover, "[t]he wisdom, justice, policy, or expediency of a statute are questions for the Legislature alone.... It is the duty of the courts to interpret the meaning of legislative enactments without regard to the possible results." *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962).

Id. at 853. (Emphasis added.)

The same could be said of the Industrial Commission's Decision in the case at hand. Simply because a "very literal interpretation" would not "reflect the reality of the Department's day-to-day business practices" does not make the Claimant's interpretation faulty.

The IDOL and the Industrial Commission obviously want to believe that the Claimant received the March 6, 2013 letter and that she for some reason did not timely respond to it, despite the fact that she provided the information requested of her to IDOL later that month after she became aware it was required of her. It is astounding to this first-time Claimant of unemployment benefits, who received benefits for approximately two months while she diligently sought and found suitable employment, that the Department is so seemingly hell-bent on calling her a liar and denying her three weeks' worth of benefits to which she was entitled. It makes zero sense to her and appears to be an abusive power play. The Department wants the statute to say something it doesn't so that it can justify denying her benefits. It somehow wants her to "prove" that she didn't receive the mail when it is impossible to prove that she didn't receive it.

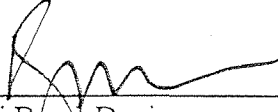
The Claimant can, however, prove that mail is at times not delivered when and where it should be. Ironically, while preparing this Motion for Reconsideration, the Claimant received a communication from the State of Idaho Industrial Commission. The envelope was addressed to her and the postmark shows it was mailed on August 6, 2013. The Claimant opened the mail and found a Decision and Order inside. However, the Decision and Order was not her case and should not have been mailed to her. It was the case of *Joseph Slaughter v. Department of Agriculture, et al.*, IDOL Case No. 3912-2013. A true and correct copy of this communication, which was erroneously mailed to Claimant Boyd-Davis is attached hereto as Exhibit "A." By its

own error in mailing, the Industrial Commission has proven that mail intended to be served at a certain time upon a certain party does not always find its way to the intended recipient.

Conclusion

Claimant Boyd-Davis respectfully requests that the Industrial Commission reconsider its Decision in light of the additional legal argument regarding rules of construction of statutory intent presented herein. The Claimant would encourage the Industrial Commission to “liberally construe the Employment Security Law to the end that its purpose be accomplished” rather than penalizing the Claimant by denying her benefits.

DATED this 14th day of August 2013.

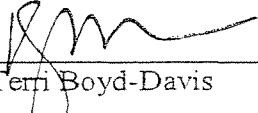


Terri Boyd-Davis
Claimant

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served on the following in the manner indicated on this 14th day of August 2013.

Macomber Law PLLC 4908 E. Sherman Ave., Ste. 316 Coeur d'Alene, ID 83814	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-664-9933
Deputy Attorney General Idaho Department of Labor Statehouse Mail 317 W. Main St. Boise, ID 83735	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile: 208-854-8071



Terri Boyd-Davis

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

JOSEPH SLAUGHTER

SSN: [REDACTED]

Claimant,

v.

DEPARTMENT OF AGRICULTURE,

Employer,

and

HARLOW'S SCHOOL BUS SERVICE, INC.,

Major Base Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 3912 -2013

DECISION AND ORDER

FILED

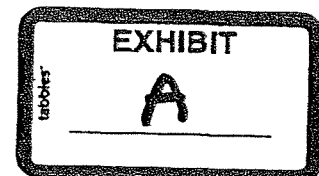
AUG - 6 2013

INDUSTRIAL COMMISSION

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

Claimant, Joseph Slaughter, appeals to the Industrial Commission a Decision issued by Idaho Department of Labor ("IDOL" or "Department") ruling him ineligible for unemployment benefits. The Appeals Examiner concluded that Claimant is ineligible for unemployment benefits effective February 10, 2013, because he did not provide information as directed by the Department.

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, 787 P.2d 263 (1990). The evidentiary record in this case consists of the audio recording of



the hearing the Appeals Examiner conducted on May 9, 2013, and the Exhibits [1 through 9] admitted during that proceeding.

FINDINGS OF FACT

The evidence in the record yields the following Findings of Fact:

1. Claimant resides in Garden Valley, Idaho and is a seasonal employee of the U.S. Department of Agriculture. Claimant is a Forestry Technician (Lookout) and drives a bus. Claimant typically works during the summer season and is unemployed during the late fall and winter months. Claimant's seasonal unemployment usually lasts at least six (6) months. (Audio Recording.)
2. During past periods of unemployment, Claimant was classified as "job-attached" and therefore not required to seek other work. (Audio Recording.) During the most recent period of unemployment, IDOL did not classify Claimant as "job-attached." Instead, IDOL required Claimant to make two (2) job contacts per week. (Audio Recording.)
3. When Claimant's benefits ran out, he sought extended benefits. Consequently, on January 24, 2013, IDOL contacted Claimant by letter notifying Claimant that he had been selected for an in-person eligibility review. The letter directed Claimant to contact the IDOL office in Emmett, Idaho, to schedule an interview. (Exhibit 4.)
4. Claimant reported for the interview on February 14, 2013. Claimant provided a resume and participated in a group orientation. However, Claimant refused to create a re-employment plan. Claimant explained that there are no full-time job openings in Garden Valley and there are no jobs in the Boise area that would pay him a "living wage" given the commuting distance and his job skills. Moreover, Claimant has a job with the Department of Agriculture that pays him a "very good wage." (Audio recording.)
5. Rather than look for work outside of Garden Valley, Claimant ceased applying for benefits under his extended benefit claim. (Audio recording.)
6. When the period of Claimant's extended benefits ended and his new benefit year began, Claimant opened a new claim for unemployment benefits on March 30, 2013. (Exhibit 8.) Claimant assumed that the work seeking requirements discussed at the interview on February 14, 2013 only applied to his extended benefit claim. Therefore, when he opened his new claim, he assumed he would be classified as job-attached as he always had been and would no longer have to be concerned with seeking work. (Audio Recording.) However, because Claimant had not complied with the requirement that he compete and pursue a re-employment plan, IDOL ruled him ineligible for unemployment benefits. (Exhibit 6.)

DISCUSSION

The facts in this case are undisputed. When Claimant sought an extension of his unemployment benefits, IDOL directed him to report to the Emmett office for an eligibility interview. Claimant reported as directed and completed two of the three steps of the interview process. Claimant refused to complete a re-employment plan because IDOL would require him to seek work beyond Garden Valley, where he lived. Claimant explained that his CDL is limited and the available full-time jobs in Boise would not pay enough after commuting expenses, taxes, and deductions to constitute a "living wage." Moreover, Claimant has a job with the Department of Agriculture. Therefore, it would be unfair of him to seek other employment when he would have to quit in the spring to return to his preferred job. (Audio recording.)

Claimant stopped filing weekly claim reports for the balance of his extended claim. When Claimant's new benefit year began on March 24, 2013, he opened a new claim for "regular" benefits. Claimant assumed that the re-employment plan and the expectation that he would look for work only applied to his extended benefit claim and therefore was no longer an issue. However, when Claimant completed his first claim report for the new benefit year, IDOL issued an Eligibility Determination ruling him ineligible for benefits effective February 10, 2013, because he had failed to complete all of the requirements of the in-person eligibility interview. (Audio Recording, Exhibit 6.) Claimant maintains that he should be classified as "job-attached" as he always has been in the past and that he should not be required to engage in a fruitless pursuit of work beyond Garden Valley. (Audio Recording.)

As part of the personal eligibility requirements for unemployment benefits, Idaho Code § 72-1366(1) requires that a claimant provide all necessary information pertinent to

eligibility. Idaho Code § 72-1366(4) requires that a claimant be “able to work, available for suitable work, and seeking work.” To ensure that a claimant meets all of the requirements necessary to qualify for unemployment benefits, including compliance with work-seeking requirements, IDOL has promulgated IDAPA 09.01.30.425.07 stating that a claimant who fails to provide the Department with all necessary information relevant to determining that claimant’s eligibility shall be denied benefits until such information is provided. Claimant has the burden of proving his 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).

Underlying Claimant’s refusal to complete a re-employment plan is his dispute over the Department’s expectation that he seek work outside of Garden Valley. This goes to Claimant’s availability for work. Claimant asks whether it is reasonable for IDOL to expect that he will seek work with such a long commute when he does not have the skills to secure a job that will pay him enough to ensure that he does not lose money in the process, particularly when he has a job that pays him well. (Audio Recording.)

The phrase “available for suitable work” is not defined in the Idaho Employment Security Law. No bright-line test exists to determine what constitutes availability for suitable work because it depends in part on the circumstances as they exist in each case. See Guillard v Department of Employment, Claim of Sapp, 75 Idaho 65, 266 P.2d 1027 (1954). A claimant is expected to look for work where an available labor market exists. Ellis v. Employment Security Agency, 83 Idaho 95, 98, 358 P.2d 396, 397 (1961). A worker must offer his or her services in a market of sufficient geographical area to include the employers that would use the services the worker has to offer.

With respect to commuting distance, which is apparently Claimant's principal objection, Idaho has adopted IDAPA 09.01.30.475.16. That regulation provides that a claimant shall not become ineligible for unemployment benefits if the travel distance to available work is excessive or unreasonable. However, refusal to apply for or accept work that is within the commuting area similar to other workers in the claimant's area and occupation will jeopardize that claimant's eligibility for benefits. For example a 68-year-old man living in Coeur d'Alene was not required to accept a job in Spokane, Washington that not only involved a 34-mile commute, but would have required the claimant to perform physically-demanding labor for an 11-hour shift that the foreman did not think the claimant could do. Johnson v. Employment Security Agency, 81 Idaho 560, 347. P.2d 766 (1959). On the other hand, another claimant was deemed unavailable for work because she limited herself to looking for jobs in Emmett and refused to expand her search to Boise after eight months of unemployment. Guillard v Department of Employment. Again, the criteria depend on the facts and circumstances in each case and balancing them against what is typical for workers in the claimant's occupation and geographic area.

Taking into consideration the myriad of criteria that are used to determine whether work is suitable for a particular claimant, there may or may not be "suitable work" for Claimant in the Boise or Nampa areas included in the labor market. However, the suitability of a job opening cannot be evaluated until a claimant applies. Claimant's refusal to even complete a re-employment plan and actively seek work outside of the commuting area he has deemed economically feasible is his choice. Nevertheless, as one court has observed, "the exercise of choice by a worker may have unfortunate consequences with him, but there are some things to which a worker must accommodate himself. The unemployment compensation fund is an employer contributed fund and is not tax

supported. It is only by meeting the availability provision of the Unemployment Compensation Law that benefits may be allowed." In re Barcomb, 132 Vt. 225, 235, 315 A.2d 476, 482 (1974).

Claimant's frustration with the changes in the expectations to maintain unemployment benefit eligibility is understandable. There was a time when a claimant engaged in seasonal employment could collect unemployment benefits for longer periods without having to look for other work while waiting for the preferred work to resume. However, economic and political forces have changed. IDOL has determined that workers who are seasonally unemployed for more than six weeks must seek other work in an effort to become fully employed as quickly as possible. This may work a hardship on Claimant and other workers in rural areas, but it is not "discriminatory," as Claimant alleges.

The evidence this record establishes that Claimant failed to complete the final step of the eligibility interview on February 14, 2013. Because Claimant did not provide the information as directed by the Department, Claimant is ineligible for unemployment benefits effective February 10, 2013, and continuing until the condition no longer exists. Claimant can demonstrate that the condition no longer exists by providing the necessary information to IDOL.

CONCLUSION OF LAW

Claimant did not provide information as directed by IDOL as required by Idaho Code § 72-1366(1), and is, therefore, ineligible for unemployment benefits effective February 10, 2013, and continuing until the condition no longer exists.

ORDER

Based on the foregoing analysis, the Decision of the Appeals Examiner is AFFIRMED. Claimant is ineligible for unemployment benefits effective February 10,

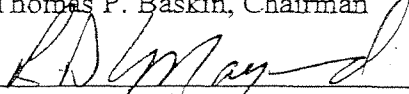
2013 as a result of his failure to comply with the Department's request for information.

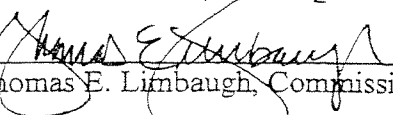
This is a final order under Idaho Code, § 72-1368(7).

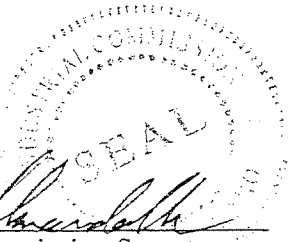
DATED this 6th day of August 2013.

INDUSTRIAL COMMISSION

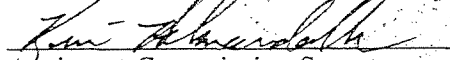

Thomas P. Baskin, Chairman


R.D. Maynard, Commissioner


Thomas E. Linbaugh, Commissioner



ATTEST:


Assistant Commission Secretary

CERTIFICATE OF SERVICE

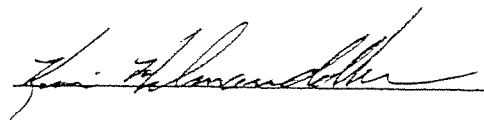
I hereby certify that on the 6th day of August 2013, a true and correct copy of **Decision and Order** was served by regular United States mail upon each of the following:

TERRI L BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

MACOMBER LAW PLLC
4908 E SHERMAN AVE STE 316
COUER D'ALENE ID 83814

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

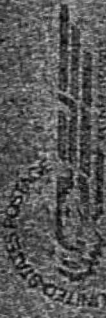
kh



From: LUKINS & ANNIS CDA

08/1 013 09:10

#316 P.015/016


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 AUG 05 01 3
 MAIL ROOM ZIP CODE 83702

TERRI L BOYD-DAVIS
 12738 N STRAHORN RD
 HAYDEN ID 83835

STATE OF IDAHO
 INDUSTRIAL COMM
 700 So. Clearwater Ln.
 PO Box 83720
 Boise, ID 83720-0041

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS,

Claimant,

v.

MACOMBER LAW, P.L.L.C.,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 3509-2013

FILED

AUG 15 2013

INDUSTRIAL COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2013, a true and correct copy of **Claimant's Motion for Reconsideration of Decision and Order** was served by regular United States mail upon each of the following:

MACOMBER LAW PLLC
PO BOX 102
COEUR D' ALENE ID 83816-0102

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

kh


Assistant Commission Secretary

cc:
TERRI L BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRIL BOYD-DAVIS,
SSN [REDACTED]

Claimant,

v.

MACOMBER LAW, PLLC,

Employer,

and

IDAHO DEPARTMENT OF LABOR.

IDOL # 3509-2013

ORDER DENYING REQUEST FOR
RECONSIDERATION

FILED

SEP - 2 2013

INDUSTRIAL COMMISSION

Request for Reconsideration of an Order from the Industrial Commission finding Claimant ineligible for unemployment benefits effective March 10, 2013, through March 30, 2013, because Claimant failed to complete an online review of her work search activities as directed by the Department of Labor. The Request for Reconsideration is DENIED.

On August 14, 2013, Claimant filed a timely Request for Reconsideration of the Decision and Order filed July 25, 2013, finding that Claimant did not complete an online review of her work search activities as directed by the Idaho Department of Labor (“IDOL” or “Department”). Claimant argues that she missed the deadline because she never received the IDOL notice of the audit in the mail. Claimant contends that IDOL’s letter is not entitled to the presumption under Idaho Code Section 72-1368(5).

Motions for reconsiderations are intended to allow the Commission an opportunity to reexamine its decision in light of additional legal arguments, a change in law, a misinterpretation of law, or an argument or aspect of the case that was overlooked. Rules of Appellate Practice and Procedure 8 (F).

In this case, the Commission found Claimant ineligible from March 10, 2013 through March 30, 2013, because she failed to complete an online review of her work search activities as directed by IDOL. Claimant argues that she would have completed the review if she had received notice of the audit, and that the Commission should apply the literal reading of Idaho Code Section 72-1368(5), which states the following:

All interested parties shall be entitled to prompt service of notice of determinations, revised determinations, redeterminations, special redeterminations and decisions. A notice shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

Because IDOL's notice of the audit was not a decision or determination, Claimant contends that the literal language of the statute, *i.e.*, the service by mail presumption, does not apply to IDOL's audit letter. Therefore, as mailing errors do occur, are difficult to prove, and are not her burden to show, the Commission should find that Claimant did not receive the IDOL audit letter. Claimant contends that the Commission has erred in its mailings by sending her documents intended for a different claimant.

While acknowledging that mailing errors do occur, the Commission has rejected Claimant's restrictive interpretation of Idaho Code Section 72-1368(5). The Commission's decision stated that "Claimant advocates a very literal interpretation of Idaho Code Section 72-1368(5) definition of service. . . . Claimant's interpretation does not reflect the reality of the Department's day-to-day business processes." Decision and Order, p. 3." Claimant has the burden of showing she meets the eligibility requirements to IDOL while she receives unemployment benefits. Indeed, Claimant's address of record has remained unchanged throughout these proceedings, and she received other IDOL mailings at her address of record.

Claimant has not shown that an error of the U.S. Postal Service delayed delivery of the IDOL audit.

As such, Claimant has not persuaded the Commission to alter the underlying Decision and Order.

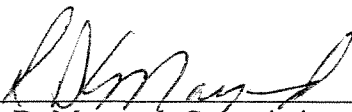
ORDER

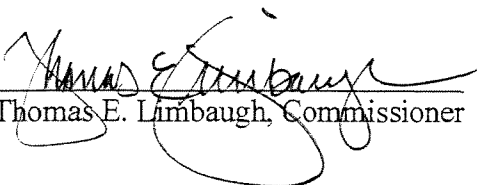
Based upon the foregoing reasons, Claimant's request for reconsideration is hereby **DENIED**. IT IS SO ORDERED.

DATED this 9th day of September, 2013.


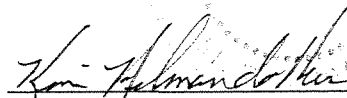
INDUSTRIAL COMMISSION


Thomas P. Baskin, Chairman


R.D. Maynard, Commissioner


Thomas E. Limbaugh, Commissioner

ATTEST:



Assistant Commission Secretary

CERTIFICATE OF SERVICE

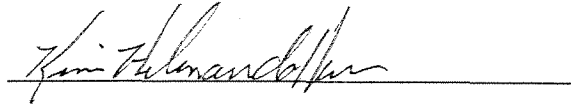
I hereby certify that on 9th day of September, 2013 a true and correct copy of the foregoing **ORDER DENYING REQUEST FOR RECONSIDERATION** was served by regular United States mail upon each of the following:

TERRIL BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

MACOMBER LAW PLLC
PO BOX 102
COEUR D'ALENE ID 83816-0102

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

kh



A handwritten signature in cursive script, appearing to read "Kimi F. Leonard", is written over a horizontal line.

Terri Boyd-Davis
12738 N. Strahorn Road
Hayden, ID 83835
Telephone: 208-659-5967
Email address: terriboyddavis@mac.com
Appellant

2013 OCT 18 P 2:02

RECEIVED
IDAHO SUPREME COURT
CLERK'S OFFICE
2013 OCT 22 A 10:30

RECEIVED
INDUSTRIAL COMMISSION

IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS,

Appellant,

v.

IDAHO DEPARTMENT OF LABOR,

Respondent.

IDOL # 3509-2013

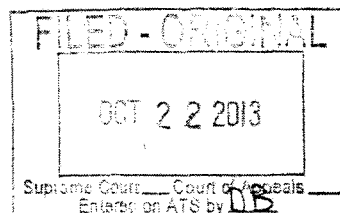
NOTICE OF APPEAL

Supreme Court No. 41523

TO: THE ABOVE NAMED RESPONDENT, the IDAHO DEPARTMENT OF LABOR AND its attorney the IDAHO ATTORNEY GENERAL, and other interested party MACOMBER LAW, P.L.L.C., Major Base Employer, and the CLERK OF THE ABOVE ENTITLED ADMINISTRATIVE AGENCY.

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellant, TERRI BOYD-DAVIS appeals against the above named respondent to the Idaho Supreme Court from the Decision and Order from the Industrial Commission entered in the above entitled proceeding on the 25th day of July, 2013, and the Order Denying Request for Reconsideration entered in the above entitled proceeding on the 9th day of September, 2013, Chairman Thomas P. Baskin presiding.



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

3. Appellant intends to assert the following issues on appeal:

- a) Did the Industrial Commission err when it determined that Idaho Code § 72-1368(5) should not be interpreted according to its plain and clear language?
- b) Did the Industrial Commission err when it found that mailings other than those specifically delineated in Idaho Code § 72-1368(5) are entitled to a presumption of service pursuant to this section?
- c) Did the decision by the Department of Labor and upheld by the Industrial Commission to deny claimant her benefits defeat the purpose of the Idaho Employment Security Law as defined in Idaho Code § 72-1302?

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

5. A reporter's transcript is not requested.

6. The appellant does not request that any additional documents other than those automatically included under Rule 28, I.A.R. be included in the agency's record.


7. I certify:

- a) That the required fee has been paid to the Industrial Commission for preparation and mailing of the Agency's Record.

- b) That the required filing fee specified by I.A.R. 23(a)(3) has been paid to the Idaho Supreme Court.
- c) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

I certify (or declare) under penalty of perjury pursuant to the law of the State of Idaho that I am the appellant in the above-entitled appeal and that all statements in this notice of appeal are true and correct.

DATED this 16th day of October 2013.



Terri Boyd-Davis
Appellant

BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

RECEIVED
SUPREME COURT
COURT OF APPEALS

TERRI L. BOYD-DAVIS,

Claimant/Appellant,

v.

MACOMBER LAW, P.L.L.C.,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

2013 OCT 22 A 10:30

SUPREME COURT NO. 41523

CERTIFICATE OF APPEAL
OF TERRI L. BOYD-DAVIS

Appeal From: Industrial Commission Chairman Thomas P. Baskin presiding.

Case Number: IDOL # 3509-2013

Order Appealed from: DECISION AND ORDER ENTERED JULY 25, 2013 AND ORDER DENYING RECONSIDERATION ENTERED SEPTEMBER 9, 2013

Representative/Claimant: TERRI L BOYD-DAVIS
12738 N STRAHORN RD
HAYDEN ID 83835

Representative/Employer: MACOMBER LAW PLLC
PO BOX 102
COEUR D'ALENE ID 83816-0102

Representative/IDOL: TRACEY K ROLFSEN
IDAHO DEPARTMENT OF LABOR
317 W MAIN ST
BOISE ID 83735

Appealed By: TERRI L. BOYD-DAVIS, Claimant/Appellant

Appealed Against: MACOMBER LAW, P.L.L.C. and IDAHO DEPARTMENT OF LABOR/Respondents

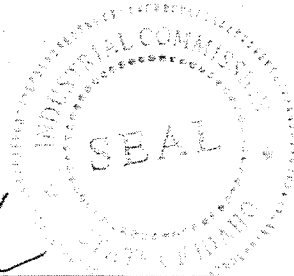
CERTIFICATE OF APPEAL OF TERRI L. BOYD-DAVIS - 1

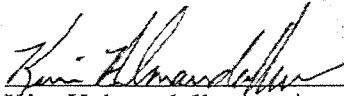
FILED - ORIGINAL

OCT 22 2013

Supreme Court Court of Appeals
Entered on ATS by DP

Notice of Appeal Filed: October 18, 2013
Appellate Fee Paid: \$94.00 (Check Attached)
Name of Reporter: M DEAN WILLIS
PO BOX 1241
EAGLE ID 83616
Transcript: Transcript Ordered
Dated: October 21, 2013






Kim Helmandollar, Assistant Commission Secretary

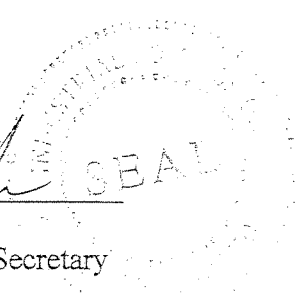
CERTIFICATION

I, Kim Helmandollar, the undersigned Assistant Commission Secretary of the Industrial Commission of the State of Idaho, hereby CERTIFY that the foregoing is a true and correct photocopy of the Notice of Appeal filed October 18, 2013; Decision and Order filed July 25, 2013; and Order Denying Reconsideration filed September 9, 2013; and the whole thereof, Docket Number 3509-2013 for Terri L. Boyd-Davis.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Commission this 21st day of October, 2013.



Kim Helmandollar
Assistant Commission Secretary



CERTIFICATION OF RECORD

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

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

DATED this 25th day of November, 2013.


Assistant Commission Secretary



BEFORE THE SUPREME COURT OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS,

Claimant/Appellant,

v.

MACOMBER LAW, P.L.L.C.,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 41523

NOTICE OF COMPLETION

TO: Stephen W. Kenyon, Clerk of the Courts; and
Terri L. Boyd-Davis, Pro Se, Claimant/Appellant; and
Macomber Law, P.L.L.C., 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:

Address For Claimant/Appellant

Terri L. Boyd-Davis
12738 N Strahorn Rd
Hayden, ID 83835

Address For Employer/Respondent

Macomber Law, P.L.L.C.
PO Box 102
Coeur d'Alene, ID 83816-0102

NOTICE OF COMPLETION (TERRI L. BOYD-DAVIS, SC # 41523) - 1

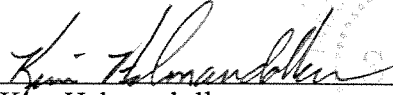
Address For Respondent

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, 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 Transcript and Record shall be deemed settled.

DATED at Boise, Idaho this 25th day of November, 2013.

INDUSTRIAL COMMISSION



Kim Helmandollar
Assistant Commission Secretary

