

FILED

Electronically

01-23-2013:11:59:17 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3482666

1 Code: \$2515
2 Brian R. Morris
3 Nevada Bar No. 5431
4 59 Damonte Ranch Parkway, B-221
5 Reno, Nevada 89521
6 775-323-2800
7 Attorney for Nadine Goodwin

Electronically Filed
Jan 24 2013 11:44 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

9 NADINE GOODWIN,

10 Petitioner/Plaintiff,

11 vs.

) Case No. CV12-00253

12 CYNTHIA JONES and RENEE OLSON, as
13 former and present Administrators;
14 STATE OF NEVADA, DEPARTMENT OF
15 EMPLOYMENT, TRAINING AND
16 REHABILITATION, EMPLOYMENT
17 SECURITY DIVISION; and BRISTLECONE
FAMILY RESOURCES, a Nevada
Corporation,

Respondents/Defendants.

) Dept. No. 3

18 **Notice of Appeal**

19 Notice is hereby given that Petitioner/Plaintiff Nadine Goodwin hereby appeals to the
20 Supreme Court of Nevada from the Order denying Ms. Goodwin's Petition for Judicial Review (a
21 final order) entered in this matter on December 20, 2012.

22 No filing or appeal fee is allowed pursuant to N.R.S. § 612.705(1).

23 **Affirmation**

24 **I certify that this filing does not contain the social security number of any person.**

25 Dated this 23rd day of January, 2013.

26 

27 _____
28 Brian Morris, Esq.
Attorney for Petitioner/Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I certify that on the 23rd day of January, 2013, I filed the foregoing with the Clerk of the
3 Court, which sent notification of such filing using the eflex filing/notification system to:

4 J. Thomas Susich, Esq.
5 1675 East Prater Way, Ste. 103
6 Sparks, Nevada 89434

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Brian Morris

1 Code 1310
2 Brian R. Morris
3 Nevada Bar No. 5431
4 59 Damonte Ranch Parkway, B-221
5 Reno, Nevada 89521
6 775-323-2800
7 Attorney for Nadine Goodwin
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

NADINE GOODWIN,)	
)	
Petitioner/Plaintiff,)	
)	
vs.)	Case No. CV12-00253
)	
CYNTHIA JONES and RENEE OLSON, as)	Dept. No. 3
former and present Administrators;)	
STATE OF NEVADA, DEPARTMENT OF)	
EMPLOYMENT, TRAINING AND)	
REHABILITATION, EMPLOYMENT)	
SECURITY DIVISION; and BRISTLECONE)	
FAMILY RESOURCES, a Nevada)	
Corporation,)	
)	
Respondents/Defendants.)	

Case Appeal Statement

1. Nadine Goodwin is the appellant filing this case appeal statement.
2. The Honorable Jerome Polaha was the judge that issued the final order being appealed.
3. The only appellant in this matter is Nadine Goodwin who is represented by the undersigned, Brian Morris, 59 Damonte Ranch Parkway, B-221, Reno, Nevada 89521.
4. The respondent is Cynthia Jones and Renee Olson as former and present administrators of the State Of Nevada, Department Of Employment, Training And Rehabilitation, Employment Security Division. Respondents were represented by J. Thomas Susich, 1675 East Prater Way, Suite 103, Sparks, Nevada 89434.

- 1 5. Another possible respondent is Bristlecone Family Resources, a Nevada Corporation, but
2 this entity did not participate in the petition for judicial review that was at issue in this
3 matter and has no known counsel.
- 4 6. All counsel listed above are licensed to practice law in Nevada.
- 5 7. The appellant was represented by retained counsel before the District Court.
- 6 8. The appellant is being represented by retained counsel in this appeal.
- 7 9. Appellant never requested and was never granted leave to proceed in forma pauperis at
8 any time including on the date the district court entered the order denying the petition for
9 judicial review.
- 10 10. The proceeding commenced before the district court on January 30, 2012.
- 11 11. This action was a petition for judicial review seeking a review of the denial of
12 unemployment benefits. The District Court denied the petition for judicial review and
13 upheld the decision made by the State Of Nevada, Department Of Employment, Training
14 And Rehabilitation, Employment Security Division.
- 15 12. This case has not been the subject of an appeal or original writ proceed before the
16 Nevada Supreme Court.
- 17 13. This appeal does not involve child custody or visitation.
- 18 14. This is a quasi-civil case, but it is not believed settlement is a possibility.
- 19

20 **Affirmation**

21 **I certify that this filing does not contain the social security number of any person.**

22 Dated this 23rd day of January, 2013.

23

24




25 Brian Morris, Esq.
26 Nevada Bar No. 5431
27 Law Office of Brian R. Morris
28 59 Damonte Ranch Parkway, B-221
Reno, Nevada 89521
775-323-2800
Attorney for Nadine Goodwin

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of January, 2013, I filed the foregoing with the Clerk of the Court, which sent notification of such filing using the eflex filing/notification system to:

J. Thomas Susich, Esq.
1675 East Prater Way, Ste. 103
Sparks, Nevada 89434



Brian Morris

1 **Code 4132**

2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **NADINE GOODWIN,**

Case No. CV12-00253

9 **Petitioner,**

Dept. No. 3

10 **vs.**

11 **CYNTHIA JONES, ET AL.,**

12 **Respondents.**

13 **/**

14 **NOTICE OF APPEAL DEFICIENCY**

15 **TO:** Clerk of the Court, Nevada Supreme Court,
16 and All Parties or their Respective Counsel Of Record:

17 On January 23, 2013, Petitioner, Nadine Goodwin, filed a Notice of Appeal with the
18 Court. Petitioner failed to include the Thirty-Four Dollar (\$34.00) District Court filing fee, the
19 Five Hundred Dollar (\$500.00) District Court appeal bond, and the Two Hundred Fifty
20 Dollar (\$250.00) Supreme Court filing fee.

21 Pursuant to NRAP 3(a)(3), on January 23, 2013, the Notice of Appeal was filed with
22 the Nevada Supreme Court. By copy of this notice Petitioner, Nadine Goodwin, was
23 apprised of the deficiency.

24 Dated this 23rd day of January, 2013.

25 **JOEY ORDUNA HASTINGS**
26 **CLERK OF THE COURT**

27 By: /s/Annie Smith
28 Annie Smith
Deputy Clerk

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CERTIFICATE OF SERVICE

CASE NO. CV12-00253

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County Of Washoe; that on the 23rd day of January, 2013, I electronically filed the Notice of Appeal Deficiency with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Brian Morris, Esq.

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: (None)

/s/Annie Smith
Deputy Clerk

**SECOND JUDICIAL DISTRICT COURT
STATE OF NEVADA
COUNTY OF WASHOE**

Case History - CV12-00253

Case Description: NADINE GOODWIN VS. CYNTHIA JONES ET AL. (D3)

Case Number: CV12-00253 Case Type: OTHER ADMINISTRATIVE LAW - Initially Filed On: 1/30/2012

Parties

<u>Party Type & Name</u>	<u>Party Status</u>
JUDG - JEROME M. POLAHA - D3	Active
ATTY - Brian R. Morris, Esq. - 5431	Active
ATTY - J. Thomas Susich, Esq. - 898	Active
PETR - NADINE GOODWIN - @1217918	Active
RESP - NEVADA DEPT. OF EMPLOYMENT, TRAINING & REHABILITATION, ESD - @17949	Active
RESP - RENEE OLSON, ADMINISTRATOR - @1218673	Active
RESP - BRISTLECONE FAMILY RESOURCES - @1217920	Active
RESP - CYNTHIA JONES - @1217919	Active

Disposed Hearings

- 1 Department: D3 -- Event: Request for Submission -- Scheduled Date & Time: 8/3/2012 at 16:45:00
Extra Event Text: PETITION FOR JUDICIAL REVIEW
Event Disposition: S200 - 10/9/2012
- 2 Department: D3 -- Event: Request for Submission -- Scheduled Date & Time: 10/3/2012 at 13:40:00
Extra Event Text: REQUEST FOR HEARING
Event Disposition: S200 - 10/9/2012
- 3 Department: D3 -- Event: PETITION FOR JUDICIAL REVIEW -- Scheduled Date & Time: 11/29/2012 at 13:30:00

Event Disposition: D840 - 11/29/2012

Actions

- | | <u>Filing Date</u> | <u>-</u> | <u>Docket Code & Description</u> |
|---|--------------------|----------|--|
| 1 | 1/30/2012 | - | \$3550 - \$Pet for Judicial Review

Additional Text: Transaction 2731004 - Approved By: MLAWRENC : 01-31-2012:08:20:23
RECEIPT VOIDED, VOUCHER PREPARED, ERRONEOUSLY CHARGED FILING FEE. MBEST 08/02/2012 |
| 2 | 1/31/2012 | - | PAYRC - **Payment Receipted

Additional Text: A Payment of \$260.00 was made on receipt DCDC345954. |
| 3 | 2/2/2012 | - | 2880 - Ord for Briefing Schedule

Additional Text: Transaction 2738121 - Approved By: NOREVIEW : 02-02-2012:11:10:27 |
| 4 | 2/2/2012 | - | NEF - Proof of Electronic Service

Additional Text: Transaction 2738130 - Approved By: NOREVIEW : 02-02-2012:11:12:27 |
| 5 | 2/10/2012 | - | \$3375 - \$Peremptory Challenge

Additional Text: PLTF: NADINE GOODWIN |
| 6 | 2/10/2012 | - | PAYRC - **Payment Receipted

Additional Text: A Payment of -\$450.00 was made on receipt DCDC347654. |

Report Does Not Contain Sealed Cases or Confidential Information

- 7 2/10/2012 - 1312 - Case Assignment Notification
 Additional Text: Transaction 2758994 - Approved By: NOREVIEW : 02-10-2012:16:24:16
- 8 2/10/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2759031 - Approved By: NOREVIEW : 02-10-2012:16:28:14
- 9 2/13/2012 - 4090 - ** Summons Issued
 Additional Text: 1
- 10 2/14/2012 - 1110 - Amended Pet ...
 Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 2764537 - Approved By: MLAWRENC : 02-14-2012:14:39:55
- 11 2/14/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2764637 - Approved By: NOREVIEW : 02-14-2012:14:46:38
- 12 2/16/2012 - 4090 - ** Summons Issued
 Additional Text: X 3
- 13 2/16/2012 - 2665 - Ord Accepting Reassignment
 Additional Text: Transaction 2771614 - Approved By: NOREVIEW : 02-16-2012:15:23:46
- 14 2/16/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2771622 - Approved By: NOREVIEW : 02-16-2012:15:25:42
- 15 2/29/2012 - 4090 - ** Summons Issued
 Additional Text: X3
- 16 3/19/2012 - 2520 - Notice of Appearance
 Additional Text: NOTICE OF INTENT TO PARTICIPATE AND DEFEND - Transaction 2833863 - Approved By: JYOST :
 03-19-2012:14:31:55
- 17 3/19/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2834254 - Approved By: NOREVIEW : 03-19-2012:14:37:11
- 18 4/9/2012 - 1130 - Answer ...
 Additional Text: ANSWER TO PETITION FOR JUDICIAL REVIEW (STATE OF NEVADA, DEPARTMENT OF EMPLOYMENT,
 TRAINING AND REHABILITATION, EMPLOYMENT SECURITY DIVISION) - Transaction 2878295 - Approved By: JYOST :
 04-09-2012:16:45:52
- 19 4/9/2012 - 3746 - Record on Appeal
 Additional Text: Transaction 2878413 - Approved By: AZION : 04-09-2012:16:42:43
- 20 4/9/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2878569 - Approved By: NOREVIEW : 04-09-2012:16:53:56
- 21 4/9/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2878579 - Approved By: NOREVIEW : 04-09-2012:16:55:53
- 22 5/9/2012 - 2640 - Opening Brief
 Additional Text: PETITIONER'S OPENING BRIEF
- 23 5/31/2012 - 1170 - Answering Brief
 Additional Text: ESD'S ANSWERING BRIEF - Transaction 2987792 - Approved By: SHAMBRIG : 05-31-2012:11:19:41
- 24 5/31/2012 - NEF - Proof of Electronic Service
 Additional Text: Transaction 2987851 - Approved By: NOREVIEW : 05-31-2012:11:21:44

- 25 7/3/2012 - 2075 - Mtn for Extension of Time
No additional text exists for this entry.
- 26 7/5/2012 - 2501 - Non-Opposition ...
Additional Text: NON-OPPOSITION TO MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF - Transaction 3061771 -
Approved By: MCHOLICO : 07-05-2012:14:43:22
- 27 7/5/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3061787 - Approved By: NOREVIEW : 07-05-2012:14:44:59
- 28 7/31/2012 - 3785 - Reply Brief
Additional Text: PETITIONER'S REPLY BRIEF
- 29 7/31/2012 - 3845 - Request for Hearing
No additional text exists for this entry.
- 30 8/2/2012 - PAYVD - **Payment Voided
Additional Text: Receipt Number DCDC345954 has been voided.
- 31 8/3/2012 - 3860 - Request for Submission
Additional Text: PETITION FOR JUDICIAL REVIEW - Transaction 3128698 - Approved By: AZION : 08-03-2012:16:34:01
DOCUMENT TITLE: PETITION FOR JUDICIAL REVIEW
PARTY SUBMITTING: J. THOMAS SUSICH ESQ
DATE SUBMITTED: 08-03-12
SUBMITTED BY: AZION
DATE RECEIVED JUDGE OFFICE:
- 32 8/3/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3128788 - Approved By: NOREVIEW : 08-03-2012:16:37:09
- 33 10/3/2012 - 3860 - Request for Submission
Additional Text: REQUEST FOR HEARING - Transaction 3259234 - Approved By: AZION : 10-03-2012:13:27:56
DOCUMENT TITLE: REQUEST FOR HEARING
PARTY SUBMITTING: BRIAN MORRIS ESQ
DATE SUBMITTED: 10-03-12
SUBMITTED BY: AZION
DATE RECEIVED JUDGE OFFICE:
- 34 10/3/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3259246 - Approved By: NOREVIEW : 10-03-2012:13:29:34
- 35 10/9/2012 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 36 10/9/2012 - S200 - Request for Submission Complet
No additional text exists for this entry.
- 37 10/11/2012 - 3347 - Order to Set
Additional Text: Transaction 3278112 - Approved By: NOREVIEW : 10-11-2012:16:59:32
- 38 10/11/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3278123 - Approved By: NOREVIEW : 10-11-2012:17:01:40
- 39 10/25/2012 - 1250 - Application for Setting
Additional Text: PETITION FOR JUDICIAL REVIEW - 11-29-12 @1:30 - Transaction 3305244 - Approved By: AZION :
10-25-2012:11:30:00
- 40 10/25/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3305342 - Approved By: NOREVIEW : 10-25-2012:11:37:39

- 41 10/29/2012 - 1360 - Certificate of Service
Additional Text: Transaction 3308762 - Approved By: YLLOYD : 10-29-2012:10:43:59
- 42 10/29/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3308823 - Approved By: NOREVIEW : 10-29-2012:10:54:37
- 43 12/3/2012 - MIN - ***Minutes
Additional Text: 11/29/12-PETITION FOR JUDICIAL REVIEW - Transaction 3382557 - Approved By: NOREVIEW : 12-03-2012:16:32:58
- 44 12/3/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3382567 - Approved By: NOREVIEW : 12-03-2012:16:34:40
- 45 12/20/2012 - 3370 - Order ...
Additional Text: ORDER DENYING JUDICIAL REVIEW - Transaction 3421638 - Approved By: NOREVIEW : 12-20-2012:16:46:25
- 46 12/20/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3421687 - Approved By: NOREVIEW : 12-20-2012:16:56:34
- 47 12/21/2012 - 2545 - Notice of Entry ...
Additional Text: Transaction 3423496 - Approved By: NOREVIEW : 12-21-2012:14:15:13
- 48 12/21/2012 - NEF - Proof of Electronic Service
Additional Text: Transaction 3423511 - Approved By: NOREVIEW : 12-21-2012:14:16:16
- 49 1/23/2013 - 2515 - Notice of Appeal Supreme Court
Additional Text: APPELLANT, NADINE GOODWIN - Transaction 3482666 - Approved By: ASMITH : 01-23-2013:14:15:21
- 50 1/23/2013 - 1310 - Case Appeal Statement
Additional Text: Transaction 3482671 - Approved By: ASMITH : 01-23-2013:13:47:00
- 51 1/23/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3483153 - Approved By: NOREVIEW : 01-23-2013:13:51:16
- 52 1/23/2013 - NEF - Proof of Electronic Service
Additional Text: Transaction 3483442 - Approved By: NOREVIEW : 01-23-2013:14:23:22
- 53 1/23/2013 - 4113 - District Ct Deficiency Notice
Additional Text: Transaction 3483611 - Approved By: NOREVIEW : 01-23-2013:14:37:41
- 54 1/23/2013 - 1350 - Certificate of Clerk
Additional Text: CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 3483611 - Approved By: NOREVIEW : 01-23-2013:14:37:41

1 **CODE 3370**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8

9 **NADINE GOODWIN,**

10 **Petitioner,**

Case No. CV12-00253

11 **vs.**

Dept. No. 3

12 **CYNTHIA JONES, et al.,**

13 **Respondents.**

14 _____/

15

16 **ORDER**

17 The claimant was employed as an adult and family drug court administrator from

18 September 2, 2003 to July 7, 2011, by Bristlecone Family Resources. She was terminated

19 by the employer for misconduct. She applied for unemployment compensation and was

20 denied, she filed an appeal and the referee affirmed the denial. She then filed an appeal

21 with the Board of Review but it declined further review under its order of January 3, 2012.

22 Then she timely filed this petition for judicial review. Both the initial adjudicator and the

23 referee found that she was not entitled to receive unemployment insurance benefits

24 because she was guilty of industrial misconduct under NRS 612. 385.

25

26

27 The standard of review this Court must adhere to is - if supported by evidence in the

28 absence of fraud, the decision of the Board is conclusive. NRS 612. 530 (4); *State*

1 *Employment Security Department v. Weber*, 100 Nev. 121, 676 P.2d 1318(1984). In
2 reviewing the Board's decision, the court is limited to determining whether the Board acted
3 arbitrarily or capriciously. In performing its review function, this court may not substitute its
4 judgment for that of the Board of Review. See *Weber, supra*. Nor may the court pass upon
5 the credibility of witnesses or weigh the evidence but must limit review to a determination
6 that the Board's decision is based upon substantial evidence. NRS 233.135(3). Substantial
7 evidence has been defined as that which a reasonable mind might accept as adequate to
8 support a conclusion. *Richardson v. Perales*, 402 U.S. 389 (1971). The court is confined
9 to a review of the record presented below, the Board's action is not an abuse of discretion
10 if it is supported by substantial evidence in the record. *State Department of Commerce v.*
11 *Soeller*, 98 Nev. 579 at 586, 656 P.2d 224 (1982).

12
13 Here claimant admitted at the initial hearing that she had been informed of the
14 requirement of obtaining her Bachelor's degree within a ten-year period and that fulfilling
15 her educational requirements for licensure was a condition of her employment. The
16 findings below concluded that petitioner was rightfully denied benefits on the grounds that
17 she was discharged for reasons of misconduct. Misconduct is behavior that falls short of
18 the standards that an employer has a reasonable right to expect and generally includes an
19 element of wrongfulness. *Barnum v. Williams*, 84 Nev. 37, 436 P.2d 219 (1968). *Clark*
20 *County School District v. Bundley*, 122 Nev. 1441, 48 P.3d 750 (2006).

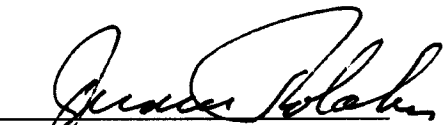
21
22 This court finds that there is sufficient evidence to support the Board of Examiners
23 findings. Claimant was aware she had 10 years to obtain the Bachelor's degree. She was
24 advised partway through her tenure of that requirement, specifically, in February, 2007 and
25 unfortunately, she failed to meet that requirement. Misconduct does not denote only
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1 wrongful action in this case. It includes negligence and she was negligent in not
2 maintaining her qualifications for the job.

3 The court finds the employer was within its rights to require such of their employees
4 and notwithstanding Claimant's efforts throughout the 10 year period, her employer was
5 within its rights to terminate her for failing the requirement.
6

7 Therefore the petition for judicial review is denied

8 Dated this 20th day of December, 2012.

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11 JEROME POLAHA
12 DISTRICT JUDGE
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 20 day of December, 2012, she mailed copies of the foregoing ORDER in Case No. CV11-01667 to the following:

The following have been served electronically:

J. Thomas Susich, Esq.

The following have been served electronically:

Brian Morris, Esq.
59 Damonte Ranch Parkway B-221
Reno, NV 89521

Bristlecone Family Resources
P. O. Box 52230
Sparks, NV 89435


Administrative Assistant

1 **2540**

J. THOMAS SUSICH, ESQ.

2 Nevada State Bar No. 898

STATE OF NEVADA, Department of

3 Employment, Training & Rehabilitation (DETR),

Employment Security Division (ESD)

4 1675 East Prater Way, Suite 103

Sparks, NV 89434

5 Telephone No.: (775) 284-9533

Facsimile No.: (775) 284-9513

6 *Attorney for ESD*

7
8 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9 **IN AND FOR THE COUNTY OF WASHOE**

10 NADINE GOODWIN,

11 Petitioner,

12 vs.

13 CYNTHIA JONES and RENEE OLSON, as
former and present Administrators; STATE OF
14 NEVADA, DEPARTMENT OF
EMPLOYMENT, TRAINING AND
15 REHABILITATION, EMPLOYMENT
SECURITY DIVISION; and BRISTLECONE
16 FAMILY RESOURCES, a Nevada
Corporation, as Employer,

17 Respondents.

CASE NO.: CV12-00253

DEPT. NO.: 3

18 **NOTICE OF ENTRY OF ORDER**

19
20 **PLEASE TAKE NOTICE** that on the 20th day of December, 2012, the Court
21 entered its Order which denied Petition for Judicial Review in the above-entitled matter. A copy
22 of said Order is attached hereto.

23 ///

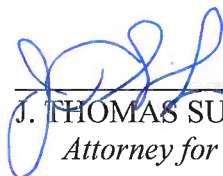
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AFFIRMATION Pursuant to NRS 239B.030:

The undersigned does hereby affirm that the preceding document does not contain confidential information; including, but not limited to: the Social Security number or employer identification number of any person or party.

DATED this 21st day of December, 2012.



J. THOMAS SUSICH, ESQ.
Attorney for ESD

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of
3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and
4 correct copy of the foregoing NOTICE OF ENTRY OF ORDER, by placing the same within an
5 envelope upon which first class postage was fully prepaid and affixed, which was thereafter
6 sealed and deposited for mailing with the United States Postal Service at Sparks, Nevada,
7 addressed for delivery as follows:

8 Brian R. Morris, Esq.
9 59 Damonte Ranch Pkwy., B-221
Reno, NV 89521

10 Bristlecone Family Resources
11 P.O. Box 52230
12 Sparks, NV 89435

13 **DATED** this 21st day of December, 2012.

14
15 
16 CHERYL KILGORE

1 **CODE 3370**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **NADINE GOODWIN,**

10 **Petitioner,**

Case No. CV12-00253

11 **vs.**

Dept. No. 3

12 **CYNTHIA JONES, et al.,**

13 **Respondents.**
14 _____/

15
16 **ORDER**

17 The claimant was employed as an adult and family drug court administrator from
18 September 2, 2003 to July 7, 2011, by Bristlecone Family Resources. She was terminated
19 by the employer for misconduct. She applied for unemployment compensation and was
20 denied, she filed an appeal and the referee affirmed the denial. She then filed an appeal
21 with the Board of Review but it declined further review under its order of January 3, 2012.
22 Then she timely filed this petition for judicial review. Both the initial adjudicator and the
23 referee found that she was not entitled to receive unemployment insurance benefits
24 because she was guilty of industrial misconduct under NRS 612. 385.
25

26 The standard of review this Court must adhere to is - if supported by evidence in the
27 absence of fraud, the decision of the Board is conclusive. NRS 612. 530 (4); *State*
28

1 *Employment Security Department v. Weber*, 100 Nev. 121, 676 P.2d 1318(1984). In
2 reviewing the Board's decision, the court is limited to determining whether the Board acted
3 arbitrarily or capriciously. In performing its review function, this court may not substitute its
4 judgment for that of the Board of Review. See *Weber, supra*. Nor may the court pass upon
5 the credibility of witnesses or weigh the evidence but must limit review to a determination
6 that the Board's decision is based upon substantial evidence. NRS 233.135(3). Substantial
7 evidence has been defined as that which a reasonable mind might accept as adequate to
8 support a conclusion. *Richardson v. Perales*, 402 U.S. 389 (1971). The court is confined
9 to a review of the record presented below, the Board's action is not an abuse of discretion
10 if it is supported by substantial evidence in the record. *State Department of Commerce v.*
11 *Soeller*, 98 Nev. 579 at 586, 656 P.2d 224 (1982).

14 Here claimant admitted at the initial hearing that she had been informed of the
15 requirement of obtaining her Bachelor's degree within a ten-year period and that fulfilling
16 her educational requirements for licensure was a condition of her employment. The
17 findings below concluded that petitioner was rightfully denied benefits on the grounds that
18 she was discharged for reasons of misconduct. Misconduct is behavior that falls short of
19 the standards that an employer has a reasonable right to expect and generally includes an
20 element of wrongfulness. *Barnum v. Williams*, 84 Nev. 37, 436 P.2d 219 (1968). *Clark*
21 *County School District v. Bundley*, 122 Nev. 1441, 48 P.3d 750 (2006).

24 This court finds that there is sufficient evidence to support the Board of Examiners
25 findings. Claimant was aware she had 10 years to obtain the Bachelor's degree. She was
26 advised partway through her tenure of that requirement, specifically, in February, 2007 and
27 unfortunately, she failed to meet that requirement. Misconduct does not denote only
28

wrongful action in this case. It includes negligence and she was negligent in not maintaining her qualifications for the job.

The court finds the employer was within its rights to require such of their employees and notwithstanding Claimant's efforts throughout the 10 year period, her employer was within its rights to terminate her for failing the requirement.

Therefore the petition for judicial review is denied

Dated this 20th day of December, 2012.

JEROME POLAHA
DISTRICT JUDGE

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 20 day of December, 2012, she mailed copies of the foregoing ORDER in Case No. CV11-01667 to the following:

The following have been served electronically:

J. Thomas Susich, Esq.

The following have been served electronically:

Brian Morris, Esq.
59 Damonte Ranch Parkway B-221
Reno, NV 89521

Bristlecone Family Resources
P. O. Box 52230
Sparks, NV 89435



Administrative Assistant

FILED

Electronically

12-03-2012:04:32:31 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3382557

CASE NO. CV12-00253

NADINE GOODWIN VS. CYNTHIA JONES ETAL

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

11/29/12
HONORABLE
JEROME M.
POLAHA
DEPT. NO. 3
M. Merkouris
(Clerk)
J. Dotson
(Reporter)

PETITION FOR JUDICIAL REVIEW

1:35pm – Court convened.

Plaintiff Nadine Goodwin was present with counsel, Brian Morris, Esq.

J. Thomas Susich, Esq., was present on behalf of the Defendants.

Counsel Morris addressed the Court and argued in support of the Petition for Judicial Review.

Counsel Susich addressed the Court and responded; and he further argued that the evidence presented by counsel Morris supports the decision denying the Plaintiff's unemployment benefits, and it should be upheld.

Counsel Morris replied; counsel Susich further responded.

COURT ORDERED: Matter taken under advisement.

2:57pm – Court concluded and stood in recess.

FILED

Electronically

01-23-2013:02:34:43 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3483611

1 **Code 1350**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **NADINE GOODWIN,**

9 **Petitioner,**

10 **vs.**

Case No. CV12-00253

11 **CYNTHIA JONES, ET AL.,**

Dept. No. 3

12 **Respondents.**

13 **/**

14
15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of
17 Nevada, County of Washoe; that on the 23rd day of January, 2013, I electronically filed the
18 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

21 Dated this 23rd day of January, 2013

22
23 **JOEY ORDUNA HASTINGS**
24 **CLERK OF THE COURT**

25 By /s/ Annie Smith
26 Annie Smith
27 Deputy Clerk
28