

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 ///

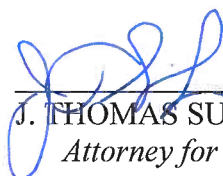
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AFFIRMATION Pursuant to NRS 239B.030:

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

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 _____/

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16 **ORDER**

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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
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18 the standards that an employer has a reasonable right to expect and generally includes an
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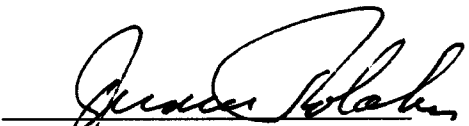
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7 Therefore the petition for judicial review is denied

8 Dated this 20th day of December, 2012.

9
10 
11 JEROME POLAHA
12 DISTRICT JUDGE
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1 CERTIFICATE OF MAILING

2 The undersigned hereby certifies that on the 20 day of December, 2012, she
3 mailed copies of the foregoing ORDER in Case No. CV11-01667 to the following:
4

5 **The following have been served electronically:**

6 J. Thomas Susich, Esq.

7 **The following have been served electronically:**

8
9 Brian Morris, Esq.
10 59 Damonte Ranch Parkway B-221
11 Reno, NV 89521

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

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Administrative Assistant

1 Code: 3550
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
8

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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.)	

PETITION FOR JUDICIAL REVIEW (amended)

Comes Now, Petitioner/Plaintiff Nadine Goodwin, by and through undersigned counsel and files this Petition for Judicial review and related actions.

1. This action is brought pursuant to and is governed by Chapter 612 of the Nevada Revised Statutes, specifically N.R.S. § 612.530.
2. **There is no filing fee allowed to be charged or collected pursuant to N.R.S. § 612.705(1).**
3. A hearing is requested pursuant to N.R.S. § 612.530(5).
4. Nadine Goodwin worked for Bristlecone Family Resources in Washoe County.

- 1 5. Nadine Goodwin was separated from her employment with Bristlecone Family
2 Resources.
- 3 6. Nadine Goodwin requested unemployment benefits from Respondents/Defendants.
4 Bristlecone Family Resources argued against Nadine Goodwin receiving any
5 unemployment benefits.
- 6 7. Nadine Goodwin was denied unemployment benefits by the State Of Nevada,
7 Department Of Employment, Training And Rehabilitation, Employment Security
8 Division. (R-11-B-02466 and R-11-A-09261).
- 9 8. Said decision to not allow Nadine Goodwin to have unemployment benefits was not
10 supported by the law.
- 11 9. Said decision was not supported by relevant and/or substantial evidence.
- 12 10. Said decision was an abuse of discretion.
- 13 11. Said decision was arbitrary and/or capricious.
- 14 12. Said decision was erroneous and a clear error of law.
- 15 13. Said decision should be reversed and/or should be remanded back to the State Of
16 Nevada, Department Of Employment, Training And Rehabilitation, Employment
17 Security Division for determination of any fees and costs.
- 18 14. Nadine Goodwin has been damaged by being denied her unemployment benefits.
- 19 15. Nadine Goodwin has been required to hire an attorney to properly assert her rights to
20 unemployment benefits and should be awarded fees and costs.

21 **Affirmation**

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

23 Dated this 14th day of February, 2012.

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25
26 

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

NADINE GOODWIN,
Appellant,
vs.
CYNTHIA JONES and RENEE OLSON, as
former and present Administrators;
STATE OF NEVADA, and BRISTLECONE
FAMILY RESOUR

No.

62493

Electronically Filed
Apr 16 2013 09:11 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 26 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District **Second**

Department **3**

County **Washoe**

Judge **Jerome Polaha**

District Ct. Case No. **CV12-002**

2. Attorney filing this docketing statement:

Attorney **Brian Morris**

Telephone **775-323-2800**

Firm **Law Firm of Brian Morris**

Address **59 Damonte Ranch Pkwy, B221
Reno, Nevada 89521**

Client(s) **Nadine Goodwin**

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney **J. Thomas Susich**

Telephone **774-284-9533**

Firm **J. Thomas Susich Attorney for DETR/ESD**

Address **1675 East Prater, Ste. 103
Sparks, Nevada 89434**

Client(s) **State of Nevada Employment Security Department**

Attorney

Telephone

Firm

Address

Client(s)

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): <input type="text"/> |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input checked="" type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): <input type="text"/> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

N/A

Only the case this was appealed from.

8. Nature of the action. Briefly describe the nature of the action and the result below:

Judicial Review of denial of unemployment benefits.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

Principal Issue: . Did the DETR err by finding that Ms. Goodwin was disqualified from unemployment benefits based on committing an act of misconduct in connection with her work?

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None known

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Trial. If this action proceeded to trial, how many days did the trial last? 0

Was it a bench or jury trial? bench - judicial review

14. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from Dec 20, 2012

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. Date written notice of entry of judgment or order was served Dec 21, 2012

Was service by:

☐ Delivery

☒ Mail/electronic/fax

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing

☐ NRCP 52(b) Date of filing

☐ NRCP 59 Date of filing

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

(c) Date written notice of entry of order resolving tolling motion was served

Was service by:

☐ Delivery

☐ Mail

18. Date notice of appeal filed Jan 23, 2013

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |

(b) Explain how each authority provides a basis for appeal from the judgment or order:
A final order was entered denying Ms. Goodwin's judicial review petition.

21. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

1. NADINE GOODWIN
2. CYNTHIA JONES and RENEE OLSON, as former and present Administrators;
STATE OF NEVADA, DEPARTMENT OF EMPLOYMENT, TRAINING AND
REHABILITATION, EMPLOYMENT SECURITY DIVISION
3. BRISTLECONE FAMILY RESOURCES

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Bristlecone Family Resosurces never filed a Notice of Intent to participate before the District Court as was required (NRS 233B.130(3) and chose to not participate before the District Court.

22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Judicial Review petition seeking unemployment beneifts from the State of Nevada.

23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

24. If you answered "No" to question 23, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Nadine Goodwin
Name of appellant

Brian R. Morris
Name of counsel of record

Apr 15, 2013
Date

/s/
Signature of counsel of record

Washoe County Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 15th day of April, 2012, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

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

Dated this 15th day of April, 2013

/s/
Signature