

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

NADINE GOODWIN,

Appellant/Plaintiff,

vs.

CYNTHIA JONES and RENEE
OLSON, as 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.

Supreme Court No. CV12-00253

District Court Case No. CV1200254

**APPELLANT GOODWIN'S STATEMENT
OPPOSING ASSIGNMENT TO APPELLATE COURT**

Appellant Goodwin is writing this statement in a quick fashion as she was only given three (3) judicial days to file her Statement.

This matter has been fully briefed and was submitted to this Court more than a year ago with it being in line and ripe for a decision. The issue before this Court is a matter of statewide public importance as it involves the interpretation of unemployment benefits that affects a large percentage of Nevada's residents that apply for unemployment benefits - a system that is set up for individuals to represent themselves as most cannot afford counsel after losing their employment especially for appeals within Nevada's court system. The specific issue is the definition and application of what constitutes misconduct under N.R.S. § 612.385 where one is denied unemployment benefits. (Opening Brief p. 4).

While virtually all appeals involve interpretation of prior case law, nonetheless appeals are still needed as the application of prior case law decisions is not always clear or does not address all situations. This is the case here as each side points to

1 different case law to support their analysis as to what misconduct is as it applies to
2 the denial of unemployment benefits.

3 By statute, misconduct must be "misconduct connected with the person's
4 work." N.R.S. § 612.385. (Opening Brief p. 8). Even though Goodwin's employer
5 stated it would have given Goodwin a different position had one been available
6 (Opening Brief p. 3, Fact no. 13) which shows her employer did not consider
7 Goodwin to have engaged in any misconduct, Unemployment (ESD) nonetheless
8 found misconduct based on Goodwin not finishing her college Bachelor's Degree
9 (which made her ineligible to continue in her current position). Goodwin argues that
10 this is not willful misconduct and was not connected with her actual work, i.e. if
11 anything it is off-duty conduct and not obtaining her degree was not willful as she
12 was working towards it.¹ Respondent ESD argues to the contrary. Goodwin submits
13 that case law is not clear and/or difficult for Nevada's unemployment tribunals to
14 apply. As an example, Goodwin showed that it is not considered misconduct in
15 Nevada when one is incarcerated and is unable to show up to work. *State,*
16 *Employment Sec. Dept. v. Evans*, 111 Nev. 1118 (1995). (Opening Brief pp. 8-9).
17 Therefore simply not obtaining a college degree cannot be considered misconduct.
18 But to counter in part, ESD's presented Nevada case law showing that taking illegal
19 drugs off-duty can be a reason to find misconduct connected to one's job. (Answering
20 Brief pp. 15-16). ESD then presented non-Nevada cases which required Goodwin to
21 do the same. (Answering Brief 24:8-13)(Reply Brief, p. 4). This shows there is not
22 sufficient case law in Nevada to address this issue.

23 This case shows further clarification is needed to clarify what is misconduct in
24 the State of Nevada to deny unemployment benefits. Given the above, there are
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26

27 ¹ Misconduct involves willfulness. *Kolnik v. Nevada Employment Sec. Dept.*, 112 Nev.
28 11, 15-16 (1996). (Opening Brief, p. 9).

1 circumstances that warrant this Court retaining this matter as it involves an issue of
2 statewide public importance which needs clarification.

3
4 **Affirmation**

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

7 Dated this 5th day of January, 2015.

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CERTIFICATE OF SERVICE

I certify that on the 5th day of January, 2015, 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.



Brian Morris