

NOTICE OF ENTRY OF ORDER FILED MAY 8, 2014



CLERK OF THE COURT

1 **NEO**
RON SUNG, ESQ.
2 Nevada State Bar No. 13047C
I. KRISTINE BERGSTROM, ESQ.
3 Nevada State Bar No. 10841
Nevada Legal Services, Inc.
4 530 South Sixth Street
Las Vegas, Nevada 89101
5 (702) 386-0404 x148
Facsimile (702) 388-1641
6 *Attorneys for Calvin Murphy*

7
8 **DISTRICT COURT**
CLARK COUNTY, NEVADA

9 CALVIN MURPHY,

10 Petitioner,

Case No. A-13-689756-J
Dept. 1

11 -vs-

12 EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA, and RENEE L.
13 OLSEN, as Administrator
of the EMPLOYMENT SECURITY
14 DIVISION; KATIE JOHNSON, as
Chairperson the EMPLOYMENT
15 SECURITY DIVISION BOARD OF
REVIEW; and
16 GREYSTONE PARK APARTMENTS
as employer,

17 Respondents.
18 _____ /

19 **NOTICE OF ENTRY OF ORDER**
20

1 TO: EMPLOYMENT SECURITY DIVISION, Respondent, by and through
2 J. Thomas Susich, Esq.

3 TO: GREYSTONE PARK APARTMENTS, Respondent.

4 **YOU WILL PLEASE TAKE NOTICE** that on the 28th day of April,
5 2014, an Order was entered in the above-entitled action, a copy of which is
6 attached hereto.

7 DATED this 8th day of May, 2014.

8 Respectfully Submitted,
9 Nevada Legal Services, Inc.

10 By: 


11 Nevada State Bar No. 13047C
12 I. KRISTINE BERGSTROM, ESQ.
13 Nevada State Bar No. 10841
14 Nevada Legal Services, Inc.
15 530 South Sixth Street
16 Las Vegas, Nevada 89101
17 (702) 386-0404 x148
18 Facsimile (702) 388-1641
19 Attorneys for Calvin Murphy
20 RON SUNG, ESQ.

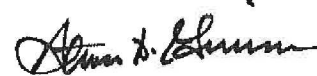
CERTIFICATE OF MAILING

I hereby certify that on this 8th day of May, 2014, I served the foregoing NOTICE OF ENTRY OF ORDER and attached ORDER upon the following person(s), by depositing a copy of same in a sealed envelope in the United States Mail, postage pre-paid, to the following:

J. Thomas Susich, Esq.
1325 Corporate Boulevard, Suite C
Reno, NV 89502
Attorney for Employment Security Division

Greystone Park Apartments
5050 S Duneville Street
Las Vegas, NV 89118
Employer


An Employee of Nevada Legal Services



CLERK OF THE COURT

1 **ORDR**
RON SUNG, ESQ.
2 Nevada State Bar No. 13047C
I. KRISTINE BERGSTROM, ESQ.
3 Nevada State Bar No. 10841
Nevada Legal Services, Inc.
4 530 South Sixth Street
Las Vegas, Nevada 89101
5 (702) 386-0404 x148
Facsimile (702) 388-1641
6 Attorneys for Calvin Murphy

7
8 **DISTRICT COURT**
CLARK COUNTY, NEVADA

9 CALVIN MURPHY,

Case No. A-13-689756-J
Dept. 1

10 Petitioner,

11 -vs-

12 EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA, and RENEE L.
13 OLSEN, as Administrator
of the EMPLOYMENT SECURITY
14 DIVISION; KATIE JOHNSON, as
Chairperson the EMPLOYMENT
15 SECURITY DIVISION BOARD OF
REVIEW; and
16 GREYSTONE PARK APARTMENTS
as employer,

17 Respondents.
18 _____ /

19 **ORDER**

20 Whereas on April 23, 2014, the Honorable Kenneth Cory considered the
21 arguments of counsel and having examined the papers and pleadings filed on
22 Petitioner's Petition for Judicial Review;

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stop Dis	<input checked="" type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stop Jdgmt	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Ref to Dis (by deft)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied/Paid in Full

Whereas the Appeals Referee's decision contains no findings or nexus between the work responsibilities and the off-duty conduct constituting misconduct beyond the employee did not show up for work;

Whereas the failure to show up for work may be sufficient for terminating employment, but without more, failure to show up for work alone is not misconduct as a matter of law and is insufficient for the denial of unemployment benefits;

IT IS HEREBY ORDERED that Motion for Judicial Review is GRANTED and the Employment Security Division's decision is REVERSED.

DATED this 14 day of June, 2014.

Kenneth Cory
JUDGE KENNETH CORY

Prepared by:
NEVADA LEGAL SERVICES, INC.

RON SUNG, ESQ.
Nevada State Bar No. 13047C
I. KRISTINE BERGSTROM, ESQ.
Nevada State Bar No. 10841
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
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(702) 386-0404 x148
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rsung@nislaw.net

ORDER ENTERED APRIL 28, 2014


CLERK OF THE COURT

ORDR
RON SUNG, ESQ.
Nevada State Bar No. 13047C
I. KRISTINE BERGSTROM, ESQ.
Nevada State Bar No. 10841
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530 South Sixth Street
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(702) 386-0404 x148
Facsimile (702) 388-1641
Attorneys for Calvin Murphy

**DISTRICT COURT
CLARK COUNTY, NEVADA**

CALVIN MURPHY,

Petitioner,

Case No. A-13-689756-J
Dept. 1

-vs-

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA, and RENEE L.
OLSEN, as Administrator
of the EMPLOYMENT SECURITY
DIVISION; KATIE JOHNSON, as
Chairperson the EMPLOYMENT
SECURITY DIVISION BOARD OF
REVIEW; and
GREYSTONE PARK APARTMENTS
as employer,

Respondents.

ORDER

Whereas on April 23, 2014, the Honorable Kenneth Cory considered the arguments of counsel and having examined the papers and pleadings filed on Petitioner's Petition for Judicial Review;

<input type="checkbox"/> Voluntary Dis	<input type="checkbox"/> Stip Dis	<input checked="" type="checkbox"/> Sum Jdgmt	FINAL DISPOSITIONS <input type="checkbox"/> Time Limit Expired <input type="checkbox"/> Dismissed (with or without prejudice) <input type="checkbox"/> Judgment Satisfied/Paid in Full
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Jdgmt	<input type="checkbox"/> Non-Jury Trial	
<input type="checkbox"/> Jdgmt on Arb Award	<input type="checkbox"/> Default Jdgmt	<input type="checkbox"/> Jury Trial	
<input type="checkbox"/> Refn to Dis (by deft)	<input type="checkbox"/> Transferred		

Whereas the failure to show up for work may be sufficient for terminating employment, but without more, failure to show up for work alone is not misconduct as a matter of law and is insufficient for the denial of unemployment benefits;

DATED this 24 day of June, 2014.

Kenneth Cory
JUDGE KENNETH CORY

RON SUNG, ESQ.
Nevada State Bar No. 13047C
I. KRISTINE BERGSTROM, ESQ.
Nevada State Bar No. 10841
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
Las Vegas, Nevada 89101
(702) 386-0404 x148
Facsimile (702) 388-1641
rsung@nslaw.net

PETITION FOR JUDICIAL REVIEW

0086

Calvin Steven Murphy
2606 Lynwood St Apt #6
Las Vegas, Nev. 89109
909-938-1576

Petitioner, In Proper Person

FILED

OCT 7 10 47 AM '13

Sharon L. Johnson
CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA



Calvin Steven Murphy

Petitioner,

VS.

EMPLOYMENT SECURITY DIVISION, STATE
OF NEVADA and RENEE OLSON in her capacity
as Administrator of the EMPLOYMENT
SECURITY DIVISION; KATIE JOHNSON, in her
capacity as Chairperson of the EMPLOYMENT
SECURITY DIVISION BOARD OF REVIEW, and
Greystone Park Apartments

as employer,

Respondents.

Case No.: A-13-689756-J
Dept. No.: I

RECEIVED

OCT 31 2013

EMPLOYMENT SECURITY DIV.
ADMINISTRATOR

PETITION FOR JUDICIAL REVIEW

The Petitioner, Calvin Steven Murphy, petitions the court to
review the decision of the State of Nevada Employment Security Division, dated
9-30-2013, finding Petitioner ineligible for unemployment
benefits, and alleges as follows:

1. That the decision was not supported by substantial evidence;

4. That the decision was improper as a matter of law.

WHEREFORE, the Petitioner, Calvin Steven Murphy, asks
for the following relief:

1. That the decision of the State of Nevada Employment Security Division be reversed, and the Petitioner be determined to be eligible for unemployment benefit for which he/she has applied.

2. That this court grant such other and further relief as may be just, equitable, and proper.

DATED this 7th day of October, 2013.

Respectfully submitted by:

Calvin Steven Murphy (signature)
2606 Lyndonwood St Apt #6
Las Vegas, Nev. 89109
909-938-1576

Petitioner, In Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA EMPLOYMENT
SECURITY DIVISION; RENEE OLSON, in
her capacity as Administrator of the
EMPLOYMENT SECURITY DIVISION; and
KATIE JOHNSON, in her capacity as
Chairperson of the EMPLOYMENT
SECURITY DIVISION BOARD OF
REVIEW,

Appellants,

vs.

CALVIN STEVEN MURPHY,

Respondent.

No.: 65681

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Jun 03 2014 03:25 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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: Eighth Department: I
County Clark Judge Kenneth Cory
District Ct. Case No. A689756

2. Attorney filing this docketing statement:

Attorney: J. Thomas Susich, Esq. Telephone: (775) 823-6673

Firm Address: J. Thomas Susich, Esq.
Senior Counsel
Nevada Employment Security Division
1325 Corporate Blvd., Suite C
Reno, Nevada 89502

Clients: State of Nevada, Employment Security Division (ESD)
Renee Olson, Administrator of ESD
Katie Johnson, Chairperson of the ESD Board of Review

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

Attorney: Ron Sung, Esq. Telephone: (702) 386-0404
I. Kristine Bergstrom, Esq.
Nevada Legal Services, Inc.
530 South Sixth Street
Las Vegas, NV 89101

Client(s): Calvin Murphy

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

- X Review of agency determination.
- X Other disposition (specify): Petition for Judicial Review Granted

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

Child Custody
Venue
Termination of parental rights

No to all.

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:

None.

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:

None.

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

Respondent Murphy was denied unemployment insurance benefits by the Employment Security Division Administrator because Murphy failed to report for work and failed to give his employer reasonable notice concerning his absence. He was determined to be guilty of misconduct under NRS 612.385 and therefore ineligible for benefits. He appealed and had an evidentiary hearing before the ESD Administrative Tribunal. The Tribunal affirmed the denial of benefits. He then appealed to the ESD Board of Review. The Board of Review declined further review under NRS 612.515, thereby affirming the decision of the Administrative Tribunal. Murphy then filed a Petition for Judicial Review. The case was fully briefed and Judge Kenneth Cory issued an order granting the petition thereby reversing the Board's decision and directed that benefits be paid to Murphy. ESD thereafter filed a timely Notice of Appeal. Murphy has been paid all of the benefits to which he was entitled under the District Court's order.

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

Murphy was arrested for possession of stolen property on June 1, 2012. He was scheduled to work on June 4, 2012. Claimant's girlfriend notified the employer on June 2, 2012, that the claimant was incarcerated but provided no other information. The claimant did not report for work on June 4, 2012, and the employer was not called on that day. Claimant continued to fail to report for work and failed to notify the employer either personally or through a surrogate regarding his status until sometime after June 10, 2012. Claimant was sentenced to one year in jail on June 10, 2012, and did not notify the employer or attempt to report for work again. Sometime after June 10, 2012, claimant's girlfriend contacted the employer inquiring about how she could obtain the claimant's final paycheck. Claimant was released from jail on June 3, 2013. Claimant was eventually treated as separated from employment under the employer's no call/no show policy.

Murphy argued before the District Court that his incarceration and the consequences of said incarceration do not constitute misconduct under NRS 612.385. Citing this court's decision in *State Emp. Sec. Dept. v. Evans*, 111 Nev. 1118, 901 P.2d 156 (1995), Murphy argued that the *Evans* case meant that incarceration causing an inability of an employee to report for work is not misconduct under NRS 612.385 as a matter of law. ESD responded arguing that *Evans* relates only to inability to report for work due to the employee's poverty and inability to post bail. ESD further argued that under *Evans*, any employee incarcerated has a duty to keep his employer fully informed of his situation. ESD maintained that the evidence established that Murphy was incarcerated for criminal conduct and pled guilty to the charges; thus, his incarceration was not due to his poverty or an inability to post bail. ESD further argued that Murphy did not keep his employer truthfully informed of his situation as is required under *Evans*.

Murphy also argued that under NRS 612.383, the criminal conduct of a claimant for benefits cannot be treated as misconduct unless the crime is set forth in NRS 612.383. ESD responded that the misconduct at issue was not the claimant's criminal behavior. The misconduct was his failure to report for work and his failure to provide his employer with a truthful explanation for his absence. ESD contended that Murphy's criminal conduct was foreseeable and that he knew his decision to possess stolen property would result in his arrest and resultant failure to report for work; and thus had a sufficient nexus with his employment to be considered misconduct in and of itself.

ESD contends that the District Courts have generally held that off-duty criminal conduct which results in incarceration has a direct connection with work and is misconduct in and of itself under NRS 612.385. Some of the District Courts have ruled that off-duty criminal conduct is not misconduct even if it results in the failure of the employee to report for work. ESD believes that this Court should issue a published opinion on this issue regarding the interrelationship of its ruling in *Evans, supra*, with the statutory provisions of NRS 612.385 and NRS 612.383.

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:

A case very similar to this case is currently pending before this court. The case is *Nevada Employment Security Division vs. Ramirez, Case No. 65544*. The *Ramirez* case was decided by the same District Judge, Kenneth Cory, involves very similar facts and the Respondent is represented by the same attorneys as in the instant case.

On October 17, 2013, this court issued an order of remand in the case of *Terry Kurtz vs. The State of Nevada Employment Security Division; Cynthia A. Jones, in her Capacity as Administrator of The Employment Security Division; and Katie Johnson, in her Capacity as Chairperson of the Employment Security Division Board of Review, Case No. 60352*. Under this Court's Order of Remand, the case has been reviewed and a decision has been rendered by the referee and affirmed by the Board of Review. The case has again been filed in the District Court and is now pending in Department XV of the Eighth Judicial District Court on a Petition for Judicial Review.

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?

Not Applicable.

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

Possible reversal or clarification of this court's decision in *Emp. Sec. Dep't vs. Evans*, 111 Nev. 1118, 901 P.2d 156 (1995).

To the extent that *Evans* does not address the issues set forth above, this case will involve a substantial issue of first impression.

ESD counsel believes that en banc consideration is necessary to maintain uniformity of this court's decisions.

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

There was an Administrative Hearing before an Administrative Judge which lasted less than one day. There was no trial before the Clark County District Court.

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?

No.

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from:

The Order was entered on April 28, 2014.

16. Date written notice of entry of judgment or order was served:

May 8, 2014.

Service by: Mail.

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

Not Applicable.

18. Date notice of appeal filed: May 13, 2014.

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

NRS 612.530(6) and NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

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

(a)

Other (specify): NRS 612.530(6)

(b) Explain how each authority provides a basis for appeal from the judgment or order:

NRS 612.530(6) reads as follows: "An appeal may be taken from the decision of the district court to the Supreme Court of Nevada in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases."

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

(a) Parties:

Appellant: The Nevada Employment Security Division of the State of Nevada's Department of Employment, Training and Rehabilitation; Renee Olson, in her capacity as Administrator of the Employment Security Division; and Katie Johnson, in her capacity as Chairperson of the Employment Security Division Board of Review (Respondents in district court).

Respondent: Calvin Steven Murphy (Petitioner in district court).

(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:

The employer, Greystone Park Apartments, is a potential Appellant; however, employer has not filed a Notice of Appeal and did not actively participate in the proceedings before the District Court even though Greystone Park Apartments, was named as a party in the District Court as required by NRS 612.530 and was served with the Petition for Judicial Review in accordance with NRS 612.530.

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:

Nevada Employment Security Division: Petition should have been denied.

Calvin Steven Murphy: Petition should have been granted.

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

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

Not Applicable.

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)):

Not Applicable.

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

- The latest filed complaint, counterclaims, cross-claims, and third party claims

File-stamped copy of Petition for Judicial Review is attached.

- Any tolling motion(s) and order(s) resolving tolling motion(s)

Not Applicable

- 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

Not Applicable

- Any other order challenged on appeal

File-stamped copy of Order entered on April 28, 2014, is attached.

- Notices of entry for each attached order

File-stamped copy of Notice of Entry of Order filed on May 8, 2014, is attached.

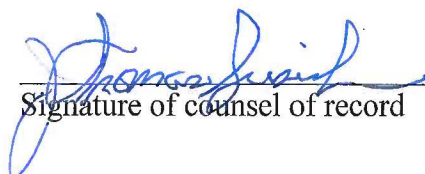
VERIFICATION

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.

Employment Security Division,
State of Nevada; Renee Olson, in her
capacity as Administrator of ESD; and
Katie Johnson, in her capacity as Chairperson
of ESD Board of Review
Appellants

J. THOMAS SUSICH, ESQ.
Counsel of record

DATED this 3rd day of June, 2014.



Signature of counsel of record

Washoe County, Nevada
County and State where signed

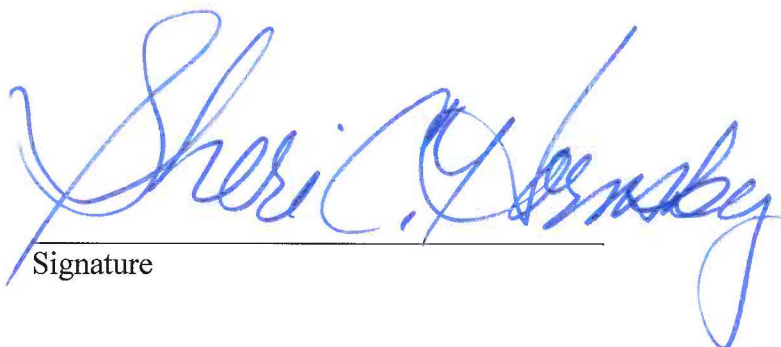
CERTIFICATE OF SERVICE

I certify that on the 3rd day of June, 2014, I served a copy of this completed docketing statement upon all counsel of record:

By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Ron Sung, Esq.
I. Kristine Bergstrom, Esq.
Nevada Legal Services, Inc.
530 South Sixth Street
Las Vegas, NV 89101

DATED this 3rd day of June, 2014.



Signature