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Electronically Filed  
Nov 05 2014 02:34 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Appellant,

vs.

Respondent.

## JOINT APPENDIX

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, NV 89101  
(702) 386-0404  
(702) 386-1614 Fax  
*Attorneys for Respondent*

## JOINT APPENDIX

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NO.	DESCRIPTION	DATE/FILED	PAGE(S)
A.	Petition for Judicial Review	10/07/2013	001-002
B.	Notice of Intent to Participate and Defend	11/05/2013	003-005
C.	Answer to Petition for Judicial Review	11/26/2013	006-008
D.	Administrative Record	11/26/2013	009-080
	• ESD Program Chief/UISS certification of copy of records of the Division pertaining to Calvin Murphy, SSN xxx-xx-9371		011
	• Petition for Judicial Review and Summons		012-022
	• Decision of the Board of Review and Acknowledgment of Receipt of Appeal		023-026
	• Decision of the Appeals Referee		027-030
	• Administrative Hearing Transcript		031-066
	• ESD Hearing Slip		067-068
	• ESD Notice of Hearing		069
	• Petitioner's Appeal Letter		070-071
	• Benefit Payment Summary and Supporting documentation; Exhibits From ESD Appeals File for Case No. V-13-A-07539		072-080

**JOINT APPENDIX**

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F.	ESD's Answering Brief	01/15/2014	097-118
G.	Petitioner's Reply Brief	01/29/2014	119-126
H.	Order	04/28/2014	127-128
I.	Notice of Entry of Order	05/08/2014	129-133
J.	ESD's Notice of Appeal	05/13/2014	134-136

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**AFFIRMATION OF APPELLANT'S COUNSEL**

Counsel for Appellant, Nevada Employment Security Division, does hereby affirm that this Joint Appendix has been presented to counsel for Respondent for review; and that Respondent's counsel has approved the same in its current form and has furthermore authorized its filing with the Court.

**DATED** this 5<sup>th</sup> day of November, 2014.

/s/ J. Thomas Susich  
J. THOMAS SUSICH, ESQ.  
*Attorney for Appellant DETR/ESD*

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
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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

Alvin 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-13-68975e-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;

2. That the decision was arbitrary and capricious;
3. That the decision was marked by an abuse of discretion; and
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.

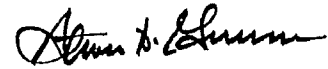
2. That this court grant such other and further relief as may be just, equitable, and proper.

DATED this 7th day of October, 2013.

Respectfully submitted by:

Calvin Steven Murphy (signature)  
2606 Lynwood St Apt #6  
Las Vegas, Nev. 89109  
909-738-1576

Petitioner, In Proper Person



CLERK OF THE COURT

1 **NOIP**  
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 **DISTRICT COURT**  
9 **CLARK COUNTY, NEVADA**

10 CALVIN STEVEN MURPHY,

11 Petitioner,

12 vs.

CASE NO.: A689756

DEPT. NO.: I

13 EMPLOYMENT SECURITY DIVISION,  
STATE OF NEVADA and RENEE OLSON,  
14 in her capacity as Administrator of the  
EMPLOYMENT SECURITY DIVISION;  
15 KATIE JOHNSON, in her capacity as  
Chairperson of the EMPLOYMENT  
16 SECURITY DIVISION BOARD OF  
REVIEW; and GREYSTONE PARK  
17 APARTMENTS, as employer,

18 Respondents.

19  
20 **NOTICE OF INTENT TO PARTICIPATE AND DEFEND**

21 **YOU AND EACH OF YOU** are hereby notified that the Nevada Employment  
22 Security Division (ESD) and its Administrator intend to participate in this matter and defend the  
23 Respondent Administrator of ESD in accordance with Nevada Rule of Civil Procedure 55(a) and  
24 (e).



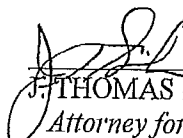
1           The Petition will be examined after receipt of the documents from the Agency to  
2 determine if it complies with Nevada law regarding timeliness and content. If the Petition is  
3 defective or untimely, ESD will file a Motion To Dismiss. If no defects exist and the Petition  
4 was filed and served timely, then the Answer to the Petition will be filed by ESD with the  
5 submission of the Administrative Record in accordance with NRS 612.530(3). The Court,  
6 Petitioner and counsel are informed that certain provisions of NRS Chapter 233B do not apply to  
7 Petitions for Judicial Review filed under NRS Chapter 612. *Please see*, NRS 233B.039(3)(a).  
8 The Employment Security Division, as an agency of the State of Nevada, is not obligated to file  
9 an Answer in this matter until 45 days after the Petition is validly served upon the Administrator  
10 of ESD in accordance with NRCP 12(3). Service which does not comply with NRS 612.530(2)  
11 and NRCP 4 is invalid and is not acknowledged as sufficient. Mailing a copy of the Petition to  
12 the Administrator is not valid service. If service is not completed as set forth in NRCP 4 within  
13 120 days of the filing of the Petition, ESD retains the right to file a Motion to Dismiss the  
14 Petition pursuant to NRCP 4(i).

15           **All future pleadings and correspondence must be directed to counsel for ESD**  
16 **as follows:**

17           J. THOMAS SUSICH, ESQ.  
18           Division Senior Legal Counsel  
19           STATE OF NEVADA, Department of  
20           Employment, Training & Rehabilitation (DETR)  
21           Employment Security Division (ESD)  
22           1675 East Prater Way, Suite 103  
23           Sparks, NV 89434

24           This Notice is provided in compliance with NRS 233B.130(3).

25           **DATED this 5<sup>th</sup> day of November, 2013.**

  
J. THOMAS SUSICH, ESQ.  
Attorney for Respondent ESD

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CERTIFICATE OF SERVICE BY MAIL

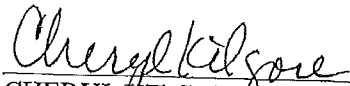
Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of the foregoing NOTICE OF INTENT TO PARTICIPATE AND DEFEND, by placing the same within an envelope upon which first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

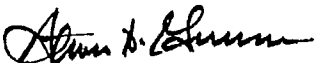
CALVIN S. MURPHY  
2606 Lynnwood St., Apt. #6  
Las Vegas, NV 89109

*Additionally*, I served a true and correct copy of the PETITION FOR JUDICIAL REVIEW, as received by the ESD Administrator and in accordance with NRS 612.530, with the Notice of Intent to Participate and Defend by mail as follows:

Greystone Park Apartments  
5050 S. Duneville  
Las Vegas, NV 89118

DATED this 5<sup>th</sup> day of November, 2013.

  
CHERYL KILGORE



CLERK OF THE COURT

1 **DOC**

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 DETR/ESD*

7  
8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 CALVIN STEVEN MURPHY,

11 Petitioner,

12 vs.

CASE NO.: A689756

DEPT. NO.: I

13 EMPLOYMENT SECURITY DIVISION,  
14 STATE OF NEVADA and RENEE OLSON,  
in her capacity as Administrator of the  
EMPLOYMENT SECURITY DIVISION;

15 KATIE JOHNSON, in her capacity as  
Chairperson of the EMPLOYMENT  
16 SECURITY DIVISION BOARD OF  
REVIEW; and GREYSTONE PARK  
17 APARTMENTS, as employer,

18 Respondents.

19 **ANSWER TO PETITION FOR JUDICIAL REVIEW**

20 **COME NOW**, Respondents, State of Nevada, Department of Employment,  
21 Training and Rehabilitation, Employment Security Division (ESD), Renee Olson, Administrator  
22 of the Employment Security Division, and Katie Johnson, Chairperson of the Employment  
23 Security Division Board of Review, by and through counsel, J. Thomas Susich, Esq., and hereby  
24 answer Petitioner's Petition for Judicial Review, in accordance with NRS 612.530, as follows:

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The ESD Respondents deny the allegations of the Petition.

DATED this 26<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
J. THOMAS SUSICH, ESQ.  
*Attorney for Nevada ESD Respondents*

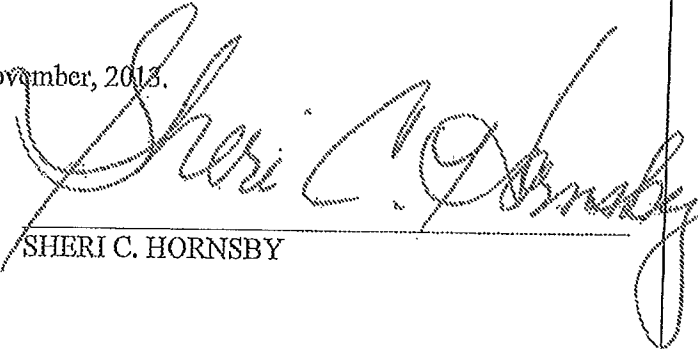
1 CERTIFICATE OF SERVICE

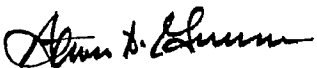
2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of the State of  
3 Nevada, over the age of 18 years; and that on the date hereinbelow set forth, I served a true and  
4 correct copy of the foregoing ANSWER TO PETITION FOR JUDICIAL REVIEW, by placing  
5 the same within an envelope upon which all first class postage and fees were fully prepaid and  
6 affixed and which was thereafter sealed and deposited for mailing with the United States Postal  
7 Service at Sparks, Nevada, addressed for delivery *via* certified mail, return receipt requested, as  
8 follows:

9 CALVIN S. MURPHY  
10 2606 Lynnwood St., Apt. #6  
Las Vegas, NV 89109

11 Greystone Park Apartments  
12 5050 S. Duneville  
Las Vegas, NV 89118

13 DATED this 26<sup>th</sup> day of November, 2013.

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15 SHERI C. HORNSBY  
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24



CLERK OF THE COURT

1 ADMR  
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 DETR/ESD*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 CALVIN STEVEN MURPHY,

10 Petitioner,

11 vs.

CASE NO.: A689756

DEPT. NO.: I


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

17 Respondents.

18 ADMINISTRATIVE RECORD

19 COMES NOW, Respondent, Administrator, State of Nevada, Department of  
20 Employment, Training and Rehabilitation, Employment Security Division (ESD), by and  
21 through counsel, J. Thomas Susich, Esq., and hereby submits the Administrative Record, as  
22 required by NRS 612.530.

23 DATED this 26<sup>th</sup> day of November, 2013.

24   
J. THOMAS SUSICH, ESQ.  
*Attorney for Respondent 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 SUBMISSION OF ADMINISTRATIVE RECORD, by placing the  
5 same within an envelope upon which all first class postage and fees were fully prepaid and  
6 affixed and which was thereafter sealed and deposited for mailing with the United States Postal  
7 Service at Sparks, Nevada, addressed for delivery *via* certified mail, return receipt requested, as  
8 follows:

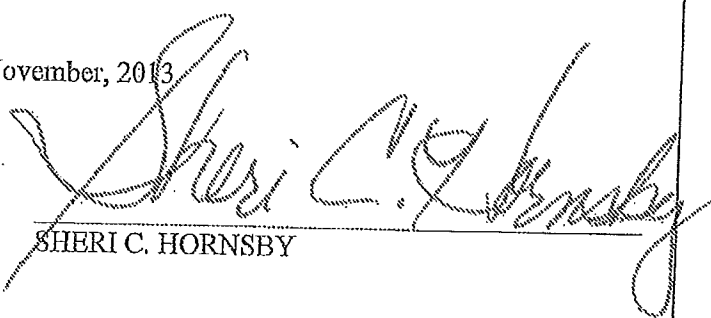
9 CALVIN S. MURPHY  
10 2606 Lynnwood St., Apt. #6  
Las Vegas, NV 89109

11 Greystone Park Apartments  
12 5050 S. Duncville  
Las Vegas, NV 89118

13 *And via e-file Courtesy Copy to:*

14 Dept01LC@clarkcountycourts.us

15 DATED this 26<sup>th</sup> day of November, 2013

16   
17 SHERI C. HORNSBY  
18  
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23  
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EMPLOYMENT SECURITY  
DIVISION

Unemployment Insurance  
Support Services



BRIAN SANDOVAL  
Governor

FRANK R. WOODBECK  
Director

RENEE L. OLSON  
Administrator

STATE OF NEVADA )

)

CARSON CITY )

County of Carson City



The undersigned, being first duly sworn and under penalty of perjury, deposes and says:

1. I am the ESD Program Chief/UISS for the Employment Security Division of the Nevada Department of Employment, Training and Rehabilitation.
2. As the ESD Program Chief/UISS, I am the custodian of certain records maintained by the Division.
3. The attached is true and correct copy of records of the Division pertaining to the following case:  
Calvin Murphy, SSN

Scott Kennedy 11/13/13

Scott A. Kennedy Date

ESD Program Chief/UISS

Employment Security Division

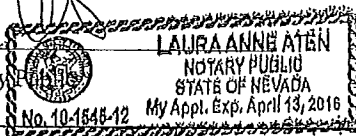
SUBSCRIBED and SWORN to

before me this 13th day

of November, 2013

Laura Anne Aten

Notary



500 East Third Street • Carson City, Nevada 89713 • (775) 684-0420 • Fax (775) 684-0344



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Calvin Steven Murphy  
2606 Lynwood St Apt #6  
Las Vegas, Nev. 89109  
909-988-1576

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.

for the following relief:

- reversed, and the Petitioner be determined to be eligible for unemployment benefit for which he/she has applied.

- proper.

DATED this 7th day of October, 2013.

Respectfully submitted by:

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

Petitioner, In Proper Person

STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW

1325 Corporate Blvd., Suite A  
Reno, Nevada 89502  
Voice: (775) 823-6676  
Fax: (775) 688-1151

**DECISION OF THE BOARD OF REVIEW:**

Date Decision is Mailed: 09/19/2013  
Date Board's Decision is Final: 09/30/2013  
Final Date for Appeal to Court: 10/11/2013

**In the Matter of:**

SSN:

[ CALVIN S MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS, NV 89109

**Appeal Rights:** An appeal to the District Court must be filed in the County in which the work was performed on or before the 'Final Date for Appeal to Court' set forth above (NRS 612.525 and 612.530).

[ GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

**Case Number: V-13-B-01527 (V-13-A-07539)**

Having reviewed the complete record and having considered the arguments presented by the parties:

- I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.
- II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

**DECISION:**

The decision of the Appeals Referee is affirmed in all respects; benefits are denied from June 2, 2013 onward, until the claimant has earned remuneration in covered employment equal to or exceeding the weekly benefit amount in each of 10 weeks, under the provisions of Section 612.385 of the Nevada Revised Statutes (Misconduct). The employer's experience rating record is not subject to charge.

Concurring: Ms. Wittenberg, Mr. Billings  
Chairperson Johnson did not participate in this discussion.

BOARD OF REVIEW

  
MARGARET WITTENBERG, BOARD MEMBER

1 SUMM

2 EIGHTH JUDICIAL DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 Calvin Steven Murphy

5 Petitioner,

6 vs.

7 EMPLOYMENT SECURITY DIVISION, STATE  
8 OF NEVADA and RENEE OLSON in her capacity  
9 as Administrator of the EMPLOYMENT  
10 SECURITY DIVISION; KATIE JOHNSON, in her  
11 capacity as Chairperson of the EMPLOYMENT  
12 SECURITY DIVISION BOARD OF REVIEW, and  
13 Greystone Park,  
14 Apartments, as employer,

15 Respondents.

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

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OCT 31 2013 AM

EMPLOYMENT SECURITY DIV.  
ADMINISTRATOR

13 SUMMONS - CIVIL

14 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
15 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
16 READ THE INFORMATION BELOW.

17 TO RESPONDENT: EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA: A  
18 civil complaint has been filed by the Petitioner against you for the relief set forth in the Petition.

19 1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
20 on you, exclusive of the day of service, you must do the following:

21 (a) File with the Clerk of this Court, whose address is shown below, a formal  
22 written response to the Petition in accordance with the rules of the Court, with the appropriate  
23 filing fee.

24 (b) Serve a copy of your response upon the attorney (or party appearing in proper  
25 person) whose name and address is shown below.

1 2. Unless you respond, your default will be entered upon application of the  
2 Petitioner and this Court may enter a judgment against you for the relief demanded in the  
3 Petition, which could result in the taking of money or property or other relief requested in the  
4 Petition.

5 3. If you intend to seek the advice of an attorney in this matter, you should do so  
6 promptly so that your response may be filed on time.

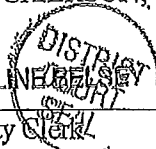
7 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
8 board members, commission members and legislator, each have 45 days after service of this  
9 Summons within which to file an Answer or other responsive pleading to the Petition.

10 Submitted by:

STEVEN D. GRIERSON, CLERK OF COURT

11 *Calvin Steven Murphy* (signature)  
12 *3606 Lynwood St Apt #6*  
*Las Vegas, Nev. 89109*  
13 *909-938-1576*  
14

By:

  
ADELIN B. SEY  
Deputy Clerk

OCT 07 2013

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

1 SUMM

2 EIGHTH JUDICIAL DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 Calvin Steven Murphy

5 Petitioner,

6 vs.

7 EMPLOYMENT SECURITY DIVISION, STATE  
8 OF NEVADA and RENEE OLSON in her capacity  
9 as Administrator of the EMPLOYMENT  
10 SECURITY DIVISION; KATIE JOHNSON, in her  
11 capacity as Chairperson of the EMPLOYMENT  
12 SECURITY DIVISION BOARD OF REVIEW, and  
13 Grey Stone Park Apartments  
14 as employer,

15 Respondents.

Case No.: A-13-1089756-J  
Dept. No.: I

Hand delivered  
RECEIVED

OCT 31 2013 AM

EMPLOYMENT SECURITY DIV.  
ADMINISTRATOR

13 SUMMONS - CIVIL

14 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
15 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
16 READ THE INFORMATION BELOW.

17 TO RESPONDENT: RENEE OLSON, in her capacity as Administrator of the  
18 Employment Security Division: A civil complaint has been filed by the Petitioner against you  
19 for the relief set forth in the Petition.

20 1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
21 on you, exclusive of the day of service, you must do the following:

22 (a) File with the Clerk of this Court, whose address is shown below, a formal  
23 written response to the Petition in accordance with the rules of the Court, with the appropriate  
24 filing fee.

25 (b) Serve a copy of your response upon the attorney (or party appearing in proper

1 person) whose name and address is shown below.

2 2. Unless you respond, your default will be entered upon application of the  
3 Petitioner and this Court may enter a judgment against you for the relief demanded in the  
4 Petition, which could result in the taking of money or property or other relief requested in the  
5 Petition.

6 3. If you intend to seek the advice of an attorney in this matter, you should do so  
7 promptly so that your response may be filed on time.

8 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
9 board members, commission members and legislator, each have 45 days after service of this  
10 Summons within which to file an Answer or other responsive pleading to the Petition.

11 Submitted by:

STEVEN D. GRIERSON, CLERK OF COURT

12 *Calvin Steven Murphy* (signature)  
13 *2606 Lynwood St Apt #6*  
*Las Vegas, Nev, 89109*  
14 *909-938-1576*  
15

By:

ADELINE BEISEY

Deputy Clerk

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

1 SUMM

2 EIGHTH JUDICIAL DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 Calvin Steven Murphy

5 Petitioner,

6 vs.

7 EMPLOYMENT SECURITY DIVISION, STATE  
8 OF NEVADA and RENEE OLSON in her capacity  
9 as Administrator of the EMPLOYMENT  
10 SECURITY DIVISION; KATIE JOHNSON, in her  
11 capacity as Chairperson of the EMPLOYMENT  
12 SECURITY DIVISION BOARD OF REVIEW, and  
13 Greystone Park Apartments, as employer,

14 Respondents.

Case No.: A-13-689756-J

Dept. No.: I

Hand delivered  
RECEIVED

OCT 31 2013 AM

EMPLOYMENT SECURITY DIV.  
ADMINISTRATOR

13 SUMMONS - CIVIL

14 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
15 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
16 READ THE INFORMATION BELOW.

17 TO RESPONDENT: KATIE JOHNSON, in her capacity as Chairperson of the  
18 Employment Security Division Board of Review: A civil complaint has been filed by the  
19 Petitioner against you for the relief set forth in the Petition.

20 1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
21 on you, exclusive of the day of service, you must do the following:

22 (a) File with the Clerk of this Court, whose address is shown below, a formal  
23 written response to the Petition in accordance with the rules of the Court, with the appropriate  
24 filing fee.

25 (b) Serve a copy of your response upon the attorney (or party appearing in proper



1 person) whose name and address is shown below.

2 2. Unless you respond, your default will be entered upon application of the  
3 Petitioner and this Court may enter a judgment against you for the relief demanded in the  
4 Petition, which could result in the taking of money or property or other relief requested in the  
5 Petition.

6 3. If you intend to seek the advice of an attorney in this matter, you should do so  
7 promptly so that your response may be filed on time.

8 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
9 board members, commission members and legislator, each have 45 days after service of this  
10 Summons within which to file an Answer or other responsive pleading to the Petition.

11 Submitted by:

STEVEN D. GRIERSON, CLERK OF COURT

12 *Calvin Steven Murphree (signature)*  
13 *2606 Lynwood St. Apt. #6*  
14 *Las Vegas, Nev. 89109*

By:

ADELINE BELSEY

Deputy Clerk

OCT 07 2013

Date

15 Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

1 SUMM.

2 EIGHTH JUDICIAL DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4 Cabrin Steven Murphy

5 Petitioner,

6 vs.

7 EMPLOYMENT SECURITY DIVISION, STATE  
8 OF NEVADA and RENEE OLSON in her capacity  
9 as Administrator of the EMPLOYMENT  
10 SECURITY DIVISION; KATIE JOHNSON, in her  
11 capacity as Chairperson of the EMPLOYMENT  
12 SECURITY DIVISION BOARD OF REVIEW, and

13 Greystone Park,  
14 Apartments, as employer,

15 Respondents.

Case No.: A-13-1089750-J

Dept. No.: I

Hand delivered  
RECEIVED

OCT 31 2013 AM

EMPLOYMENT SECURITY DIV.  
ADMINISTRATOR

13 SUMMONS - CIVIL

14 NOTICE! YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU  
15 WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 20 DAYS.  
16 READ THE INFORMATION BELOW.

17 TO RESPONDENT: Greystone Park Apartments:

18 A civil complaint has been filed by the Petitioner against you for the relief set forth in the  
19 Petition.

20 1. If you intend to defend this lawsuit, within 20 days after this Summons is served  
21 on you, exclusive of the day of service, you must do the following:

22 (a) File with the Clerk of this Court, whose address is shown below, a formal  
23 written response to the Petition in accordance with the rules of the Court, with the appropriate  
24 filing fee.

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3 Petitioner and this Court may enter a judgment against you for the relief demanded in the  
4 Petition, which could result in the taking of money or property or other relief requested in the  
5 Petition.

6 3. If you intend to seek the advice of an attorney in this matter, you should do so  
7 promptly so that your response may be filed on time.

8 4. The State of Nevada, its political subdivisions, agencies, officers, employees,  
9 board members, commission members and legislator, each have 45 days after service of this  
10 Summons within which to file an Answer or other responsive pleading to the Petition.

11 Submitted by:

STEVEN D. GRIERSON, CLERK OF COURT

12 *Calvin Steven Murphy* (signature)  
13 *3606 Lynnwood St Apt #6*  
*Las Vegas, Nev. 89109*  
14 *902-938-1576*  
15 \_\_\_\_\_

By: \_\_\_\_\_

ADELINE BELSEY

OCT 07 2013

Deputy Clerk

Date

Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
BOARD OF REVIEW

1325 Corporate Blvd., Suite A  
Reno, Nevada 89502  
Voice: (775) 823-6676  
Fax: (775) 688-1151

**DECISION OF THE BOARD OF REVIEW:**

Date Decision is Mailed: 09/19/2013  
Date Board's Decision is Final: 09/30/2013  
Final Date for Appeal to Court: 10/11/2013

**In the Matter of:**

**SSN:**

[ CALVIN S MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS, NV 89109

**Appeal Rights:** An appeal to the District Court must be filed in the County in which the work was performed on or before the 'Final Date for Appeal to Court' set forth above (NRS 612.525 and 612.530).

[ GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

**Case Number: V-13-B-01527 (V-13-A-07539)**

Having reviewed the complete record and having considered the arguments presented by the parties:

- I. The Board of Review adopts the FINDINGS OF FACT of the Appeals Referee as its FINDINGS OF FACT.
- II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

**DECISION:**

The decision of the Appeals Referee is affirmed in all respects; benefits are denied from June 2, 2013 onward, until the claimant has earned remuneration in covered employment equal to or exceeding the weekly benefit amount in each of 10 weeks, under the provisions of Section 612.385 of the Nevada Revised Statutes (Misconduct). The employer's experience rating record is not subject to charge.

Concurring: Ms. Wittenberg, Mr. Billings  
Chairperson Johnson did not participate in this discussion.

BOARD OF REVIEW

  
MARGARET WITTENBERG, BOARD MEMBER

**STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION**

**BOARD OF REVIEW**  
1325 Corporate Blvd., Suite A  
Reno, Nevada 89502  
Voice: (775) 823-6676  
Fax: (775) 688-1151  
**NOTICE OF REVIEW**

CALVIN S MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS, NV 89109

**MAILING DATE:** 08/30/2013

**BOARD OF REVIEW CASE NUMBER:**  
V-13-B-01527

**CLAIMANT'S SSN:**

**APPEAL TRIBUNAL CASE NUMBER:**  
V-13-A-07539

**APPELLANT:** CALVIN S MURPHY

GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

**REPORTING INSTRUCTIONS:**  
**CLAIMANT:** On the review hearing date and time,  
the Board of Review will call you at

**(909) 938-1576**

**A HEARING WILL BE HELD ON:**

**DATE:** WEDNESDAY SEPTEMBER 11, 2013  
**TIME:** 01:20 PM PDT  
**LOCATION:** RENO  
1325 Corporate Blvd., Suite A  
Reno, NV 89502

Aviso: Esta notificación contiene información importante respecto a una audiencia de apelación sobre seguro de desempleo. Si tiene problemas para leer o comprender inglés puede contactar a un representante de la División de Seguridad de Empleo para asistencia con la traducción. Los números de teléfono son:

Norte de Nevada.....775-687-8148  
Sur de Nevada.....702-486-2957  
Línea Gratuita.....888-687-8147

If this number is incorrect, you must call (775) 823-6676; or toll-free (855) 421-7311, prior to the hearing date and time, to provide the correct telephone number where you can be reached for the review hearing.

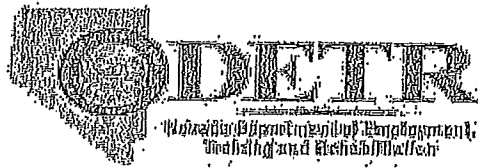
**EMPLOYER:** You will participate in the review hearing by calling the Board of Review offices at (775) 823-6676; or toll-free (855) 421-7311, fifteen (15) minutes prior to the hearing time, to provide the telephone number where you can be reached for the hearing.

**ADDITIONAL ADVISEMENT TO ALL PARTIES:**  
As noted above, as a convenience to you, the hearing will be conducted by telephone. However, as a courtesy to all parties, if you prefer to appear in person, please contact the Board of Review office at the number above, prior to the hearing date, so arrangements may be made.

The Board of Review reviews testimony and records submitted at the Referee's hearing. The Board does not accept new evidence. The Board may refer a case back to the Referee for the taking of additional evidence if the record shows good cause for non-appearance at the referee's hearing.

Parties and their representatives may appear; witnesses need not appear. You will not be permitted to give new evidence, but you may explain why you believe the evidence submitted to the Referee does or does not support the Referee decision, or why you believe the Referee's application of the law is or is not proper.

If you have questions about your review, you should contact the Board of Review at the address shown above. An attorney, union agent, or other representative at the hearing may represent you at your own expense. Hearing procedures are designed to accommodate persons who have no representative; you are under no obligation to have a representative.



## For Spanish Language Interpretation Para la traducción al Español

Aviso: Esta notificación contiene información importante acerca de su reclamo, incluyendo plazos para la apelación. Si Ud. tiene problemas para leer y entender Inglés, puede contactarse con un representante de la División de seguridad de empleo para asistencia en traducción. Los numeros de telefono son:

El Norte de Nevada . . . . 775-687-8148  
El Sur de Nevada . . . . 702-486-2957  
Numero de llamada gratuita . . . 888-687-8147

Esta decisión establece que Ud. no tiene derecho a los beneficios del Seguro de Desempleo. Usted tiene derecho a apelar esta decisión. La apelación ante el Tribunal del Distrito debe presentarse en el Condado en el que fue realizado el trabajo en la fecha correspondiente o antes de la fecha límite para la apelación ante el Tribunal tal como se establece arriba (NRS 612.525 y NRS. 612.530). Si usted no la presenta dentro de este plazo, puede perder el derecho de apelar y puede perder su oportunidad de recibir los beneficios por desempleo o cuestionar un sobresueldo. Si usted no tiene derecho a los beneficios por desempleo, usted podría ser responsable del reembolso de algún beneficio que haya tenido anteriormente.

STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
OFFICE OF APPEALS

2800 E. St. Louis Ave,  
Las Vegas, Nevada 89104-4227  
Voice: (702) 486-7933  
Fax: (702) 486-7949

BOARD OF REVIEW

1325 Corporate Blvd., Suite C  
Reno, Nevada 89502  
Voice: (775) 823-6660  
Fax: (775) 688-2686

REQUEST FOR REVIEW BY EMPLOYMENT SECURITY BOARD OF REVIEW  
ACKNOWLEDGEMENT OF RECEIPT OF APPEAL

CALVIN S MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS, NV 89109

REFeree CASE NUMBER: V-13-A-07539

BOARD OF REVIEW CASE NUMBER: V-13-B-01527

CLAIMANT'S SSN: '1

GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

OUR OFFICE HAS RECEIVED THIS APPEAL, OR  
RESPONSE TO AN APPEAL. THIS IS YOUR COPY, FOR  
YOUR RECORDS.

**TO THE PARTY FILING THIS APPEAL:** The Board of Review may decline to accept an appeal if the determination of the claims office was affirmed by the Referee. If the Board accepts the appeal, review will be only of the record established at the Referee level. The Board reviews evidence but does not take new evidence. If the Board is convinced that further opportunity to submit evidence should be provided, the Board will remand the case to the Referee for such a purpose. The Board may exercise its discretion to provide the parties with an opportunity to present oral argument. There will be no oral argument before the Board unless the Board orders it. Unless you are notified to the contrary, the Board's decision will be based solely upon the evidence previously provided, and any written argument submitted timely to the Board in accordance with this notice.

To explain your reasons for the appeal: (1) state why, if your appeal to the Board was not filed within the time limit set forth on the Referee's decision, there was a delay in appealing; (2) state why, if you did not appear at the Referee's hearing, you did not appear; (3) state what errors you believe the Referee made in the Findings of Fact portion of the decision; and (4) state what errors you believe the Referee made in the Reasons for Decision portion of the decision. Please use another sheet of paper.

**SEE ATTACHED APPEAL**

**TO ANY OTHER PARTY:** Please refer to the general information pertaining to reviews and to the appellant's statement attached. If you wish to submit a response to the appellant's statement, or any other statement to the Board of Review concerning why you believe the decision of the Referee is correct or incorrect, please submit the statement in writing to the Board of Review (Reno or Las Vegas) no later than 11 days from the mailing date of this form. Please use another sheet of paper.

**APPEALS OFFICE USE:**

Date appeal to Board was postmarked or filed in person: August 5, 2013

Received by: ja

Local office number:

Date Copy was mailed: August 13, 2013

STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
OFFICE OF APPEALS

2800 E. St. Louis Ave.  
Las Vegas, Nevada 89104-4227  
Voice: (702) 486-7933  
Fax: (702) 486-7949

**DECISION OF THE REFEREE:**

Date Decision is Mailed: 07/31/2013

Date Decision is Final: 08/12/2013

**In the Matter of:**

[ CALVIN S MURPHY  
2606 LYNNWOOD STREET # 6  
LAS VEGAS, NV 89109

[ GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

**SSN:**

**Appearances:**

Claimant  
Claimant Witness  
Employer Agent  
Employer Witness

**Appeal Rights:** The decision is final unless a signed appeal to the Board of Review is filed within 11 days of the decision's mailing date or unless good cause for the delay is shown. An appeal may be filed in person at the Appeals Office or by letter to the address above.  
(NRS 612.510)

Case Number: V-13-A-07539

**FINDINGS OF FACT:** The claimant appealed from a determination denying benefits under the voluntary leaving provisions of Nevada Revised Statutes (NRS) 612.380. The determination included a ruling that the employer's experience rating record would not be charged under NRS 612.551. The parties were advised the additional issue pursuant to NRS 612.385, whether the claimant's discharge was for reasons associated with misconduct, would also be addressed. A hearing was held.

Claimant filed an unemployment benefit claim effective June 2, 2013. A determination denying benefits was issued on June 25, 2013. The claimant filed a timely appeal.

The employer paid 75% or more of the claimant's base period earnings.

Claimant was employed from July 13, 2011 through June 10, 2012 as a maintenance employee. Claimant last worked a completed shift on June 1, 2012. Claimant worked a set scheduled shift of 8am until 4:30pm, Monday through Friday.

Claimant was discharged for being a no call no show on June 4, 2012.



On June 1, 2012 claimant was arrested due to a warrant issued for his arrest for charges stemming from possession of stolen property. Claimant was charged by the District Attorney's Office sometime in May 2012 for possession of stolen property.

On June 2, 2012 claimant's girlfriend (Tina) informed the manager (Inez) of the claimant's incarceration. Claimant's girlfriend did not tell the manager when the claimant would be getting out or how long he would be incarcerated.

Claimant's next scheduled day of work was June 4, 2012. The employer did not receive contact from the claimant or anyone else on his behalf on June 4, 2012, informing them of his inability to report to work. Claimant could not call the employer himself from jail to inform them he would be unable to report to work on June 4, 2012.

Claimant did not know how long he would be incarcerated until his Preliminary Hearing, which was held on June 10, 2012. On June 10, 2012 claimant was sentenced to one year in jail for charges of being in possession of stolen property.

Claimant's girlfriend spoke with the manager sometime after June 10, 2012 and asked if she could pick up the claimant's check, which the manager approved. The manager informed claimant's girlfriend the employer could no longer hold claimant's job for him. Claimant's girlfriend picked up claimant's check from the supervisor (Joe).

Claimant was in jail for a year. Claimant was released from jail on June 3, 2013.

Claimant was aware of the employer's no call no show policy, which informed staff they were subject to termination when being a no call no show for their shift.

**REASONS FOR DECISION:** NRS 612.380 provides for denial of benefits if an individual has left his last or next-to-last employment without good cause or to seek other work, and until he earns remuneration in covered employment equal to or exceeding his weekly benefit amount in each of ten weeks, or until he secures other employment, while NRS 612.551 provides for relief from charges against an employer's account if the claimant left without good cause.

NRS 612.385 provides that a person is ineligible for benefits if he has been discharged from his last or next-to-last employment for misconduct connected with the work, beginning with the week in which the claim is filed and until he earns remuneration in covered employment equal to or exceeding his weekly benefit amount in each of not more than 15 weeks thereafter according to the seriousness of the misconduct.

It is questionable whether this decision should be made under the voluntary quit provisions of Section 612.380 of Nevada law, or under the discharge for misconduct provisions of Section 612.385 of the law. In either case, however, a disqualification period would be assessed.

For unemployment purposes, the claimant's separation is deemed a discharge, in that claimant was separated in accordance with company policy.

In *Barnum vs. Williams*, 84 NV. 37, 436 P 2d.219 (1968), the Nevada Supreme Court reasoned that "misconduct," within the meaning of the unemployment compensation law, means a deliberate violation

or disregard of reasonable standards. Carelessness or negligence showing substantial disregard of duties is misconduct, while failure of performance because of inability, ordinary negligence in isolated instances, and good faith errors in judgment and discretion are excluded. In a later case, the Nevada Supreme Court further refined the definition by holding that misconduct required an "element of wrongfulness." *Lellis v Archie* 89 Nev. 550, at 553, 516 P.2d 469 (1973). *Garman v State, Employment Security Department*, 102 Nev. 563, at 565 729 P.2d 1335 (1986). Most recently, the Nevada State Supreme Court has held that: "Disqualifying misconduct occurs when an employee deliberately and unjustifiably violates or disregards (his) employer's reasonable policy or standard or otherwise acts in such a careless or negligent manner as to show a substantial disregard of the employer's interests or the employee's duties and obligations to (his) employer." *Clark County School District v Bundley*, 122 Nev. 1440, 148 P. 3d 750 (2006). The Nevada State Supreme Court has held that: "The employer bears the burden of proof to show that an employee engaged in deliberate or willful misconduct sufficient to disqualify the employee from receiving unemployment benefits," *Clark County School District v Bundley* 122 Nev. 1440, 148 P.3d 750 (2006).

Claimant was discharged for being a no call no show on June 4, 2012. Claimant maintains he was incarcerated and unable to call out or report for his scheduled shift.

In *State, Emp. Sec. Dep't vs. Evans*, 111 Nev. 1118, 901 P.2d 156 (1995), the Nevada Supreme Court held that when a claimant is incarcerated before a determination of guilt and dutifully calls his (or her) employer to report continued absences because the claimant cannot pay the bail, there is no misconduct under NRS 612.385.

This case differs from *Evans*. Here, claimant admitted during the evidentiary hearing that he was guilty of the criminal conduct of being arrested based on a bench warrant issued due to charges brought against him in May 2012 for being in possession of stolen property, which resulted in him being charged for the conduct and his incarceration for one year. The claimant's admitted off-duty criminal conduct is connected with the work because said conduct resulted in the claimant's inability to report for work, dutifully notify the employer, and perform his job duties. Therefore, claimant's off-duty criminal conduct, which adversely affected his ability to fulfill his dutiful obligations to the employer, demonstrated a deliberate violation or disregard of reasonable standards of conduct so as to contain an element of wrongfulness. Disqualifying misconduct connected with the work has been established.

NRS 612.551 provides that the experience rating record of an employer from whom the claimant earned 75% or more of his wages shall not be charged if the employer provides evidence within ten working days of the Notice of Claim Filing that the claimant left without good cause, or was discharged for misconduct.

The record contains sufficient evidence to warrant relief of charges.

**DECISION:** The appealed determination issued under NRS 612.380 is null, void and set aside. Pursuant to NRS 612.385, the claimant is ineligible for benefits from June 2, 2013 onward, until claimant works in covered employment and earns an amount equal to or greater than the weekly benefit amount in each of ten weeks. Under NRS 612.551, the employer's account is not subject to charge.

APPEALS REFEREE

  
DEIRDRE PARKER

in

NEVADA BOARD OF REVIEW  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION

TRANSCRIPTION OF TESTIMONY

Claimant's Name: Calvin S. Murphy

SSN No.:

Lower Authority Appeal Number: V-13-A-07539

Board Appeal Number: V-13-B-01527

Date of Hearing: July 30, 2013

Hearing Officer: Deirdre Parker

Date Transcript Completed: November 15, 2013

Appearances: Calvin S. Murphy, Claimant  
Valerie Robertson, Employer Rep  
Joseph Donahue, Employer Witness  
Tina Watkins, Claimant Witness

Certification

I certify that the following pages, number 1 through Page No. ,  
constitute a full, true and correct transcription of the  
testimony in the subject case as digitally recorded.

AVTranz

*Dianna Aldom*

Dianna Aldom, CET\*\*236

I hereby certify in accordance with NRS 612.530(3) that I am the  
duly appointed agent of the Administrator of the Nevada  
Employment Security Division and that the following is a true  
and correct transcript of the digital recording of all of the  
testimony taken in this matter before the Administrative  
Tribunal.

*Scott A. Kennedy*  
Scott A. Kennedy, ESD Program Chief  
DETR BPA II

~ 1 ~

21

1 PARKER: The Claimant is being dialed at area code 909-  
2 938-1576. Telephone display shows the number  
3 dialed 909-938-1576.  
4 (Telephone call placed)  
5 UNKNOWN: Hello.  
6 PARKER: Calvin Murphy please.  
7 UNKNOWN: Yes, hold on.  
8 MURPHY: Hello.  
9 PARKER: Calvin Murphy please?  
10 MURPHY: Yes, this is him.  
11 PARKER: This is Referee Parker with the State of Nevada  
12 Unemployment Office of Appeals.  
13 MURPHY: Okay.  
14 PARKER: If you hold the line, we're going to give the  
15 Employer Greystone Park Apartments a call. One  
16 moment.  
17 MURPHY: Okay.  
18 PARKER: Thank you.  
19 (Telephone call placed)  
20 PARKER: The Employer's witness Valerie Robertson is being  
21 dialed locally. It's 735-3308. Telephone  
22 display shows the number dialed as 735-3308.  
23 RECEPTIONIST: Greystone Park Apartments. This is Dion, how may  
24 I help you?  
25 PARKER: Hi, Valerie Robertson please.  
26 RECEPTIONIST: Yeah, may I ask who's calling?  
27 PARKER: This is Referee Parker with the Nevada  
28 Unemployment Appeals Office.

1 RECEPTIONIST: Yes, ma'am, hold on. Okay.  
2 PARKER: Thank you.  
3 ROBERTSON: Hi, this is Valerie. How may I help you?  
4 PARKER: This is Referee Parker with the State of Nevada  
5 Unemployment Office of Appeals.  
6 ROBERTSON: Hellos.  
7 PARKER: Let the record reflect the tape recorder has been  
8 activated and will remain on for the duration of  
9 the hearing and until all parties have been  
10 disconnected.  
11 ROBERTSON: Okay.  
12 PARKER: We do have present by telephone the Claimant, Mr.  
13 Calvin Murphy. Any witnesses appearing on your  
14 behalf for today's hearing, Mr. Murphy?  
15 WATKINS: Yes, I'm here, Tina Watkins.  
16 PARKER: And you are, Ms. Watkins?  
17 WATKINS: I'm his significant other. His live in  
18 girlfriend.  
19 PARKER: Okay. One moment. In the hearing proceedings, I  
20 need Mr. Murphy addressing the referee as far as  
21 witnesses. Who is your witness, Mr. Murphy?  
22 MURPHY: Tina Watkins.  
23 PARKER: Any other witnesses on your behalf?  
24 MURPHY: That's it.  
25 PARKER: Any agent or representative representing your  
26 behalf of this hearing?  
27 MURPHY: No.  
28 PARKER: All right. And also present by telephone we have

1 on behalf of the Employer, Greystone Park  
2 Apartments, Ms. Valerie Robertson. Ms.  
3 Robertson, are you a witness providing a  
4 statement of testimony concerning the Claimant's  
5 employment and separation?  
6 ROBERTSON: I was not here at the time but I am representing  
7 Greystone for that.  
8 PARKER: All right. Any witnesses appearing on behalf of  
9 the company?  
10 ROBERTSON: Joe Donahue.  
11 PARKER: First name again?  
12 ROBERTSON: Joseph Donahue.  
13 PARKER: Any other witnesses?  
14 ROBERTSON: No, ma'am.  
15 PARKER: Is Mr. Donahue present with you now or is he at  
16 another telephone number?  
17 ROBERTSON: No, he's here with me.  
18 PARKER: And your capacity, Ms. Robertson, are you acting  
19 as an agent on behalf of the company?  
20 ROBERTSON: Yes, I am.  
21 PARKER: Okay. Because we have to question witnesses, Ms.  
22 Watkins, we're going to have you disconnect the  
23 telephone line and you'll need to be separated  
24 from Mr. Murphy in an entire different room while  
25 he provides statement of testimony. If your  
26 testimony is relevant and needed, you'll be  
27 contacted at a later time and brought back into  
28 the hearing procedures.

1 WATKINS: Yes, okay.

2 PARKER: Are you sequestered from your witness, Mr.

3 Murphy?

4 MURPHY: Say it again?

5 PARKER: Are you sequestered and away from your witness,

6 Ms. Watkins?

7 MURPHY: Yes, I am.

8 PARKER: Has she disconnected the telephone line?

9 MURPHY: Yes, she is.

10 PARKER: All right. This hearing is being held to receive

11 information on the issues described in the notice

12 mailed to you. I'll go through some prehearing

13 instructions first. After I have completed those

14 instructions, I'll place you under oath, Mr.

15 Donahue, and question you regarding the

16 Claimant's employment and reasons for separation.

17 After I've questioned you, Ms. Robertson will

18 have the opportunity to question you and then Mr.

19 Murphy will have the opportunity to cross-examine

20 and question you.

21 ROBERTSON: Okay.

22 PARKER: Once Mr. Donahue has been completely questioned,

23 I'll then place you under oath, Mr. Murphy,

24 question you regarding your employment and

25 reasons for separation. After I've questioned

26 you, Ms. Robertson will have the opportunity to

27 cross-examine and question you.

28 If your witness' testimony is relevant, I'll



1 question Ms. Watkins. When questioning Ms.  
2 Watkins, it's important that you understand that  
3 you're not assisting your witness with any  
4 questions posed or any answers that your witness  
5 provides. After questioning Ms. Watkins, Mr.  
6 Murphy, you will be allowed to question her and  
7 then Ms. Robertson will be allowed to cross-  
8 examine and question her.

9 Once all the questioning has been completed  
10 by both sides of the parties, if there's anything  
11 either Mr. Donahue or Mr. Murphy feel we have not  
12 covered in your testimony that was relevant or  
13 left out, you both will be given the opportunity  
14 individually to make an additional statement and  
15 then both Ms. Robertson and Mr. Murphy will be  
16 given the opportunity to make a closing statement  
17 explaining why you believe benefits should or  
18 should not be allowed.

19 You do have the right to offer evidence  
20 during the hearing in accordance with the notice  
21 of hearing instructions. As well as the right to  
22 object to any evidence being offered, along with  
23 agency documents which I will be entering into  
24 the record as evidence.

25 Any questions regarding the procedures  
26 explained, Ms. Robertson?

27 ROBERTSON: No, ma'am.

28 PARKER: Any questions regarding the procedures explained,

1 Mr. Murphy?

2 MURPHY: No, ma'am.

3 PARKER: With that, we are officially on record in Nevada  
4 appeal case V-13-A-07539. The Claimant's name is  
5 Calvin S. Murphy, last four digits of his social  
6 is

7 This hearing is taking place on Tuesday,  
8 July 30, 2013 at 10:39 a.m. in the Office of the  
9 Appeals Referee of Las Vegas, Nevada. The  
10 parties are all present by telephone. My name is  
11 Ms. Parker and I am the appeals referee assigned  
12 by the State of Nevada to hear this case.

13 This hearing is the result of a timely  
14 claims appeal to a department determination  
15 issued June 25th, 2013 which denied benefits to  
16 the Claimant under the provisions of NRS 612.380  
17 in that the Claimant voluntarily quit without  
18 good cause.

19 A person is ineligible to receive benefits  
20 for the week in which they voluntarily left their  
21 last or next to last employment, one without good  
22 cause and until they return to work in subsequent  
23 covered employment and earns their weekly benefit  
24 amount in each of ten weeks or two, to seek other  
25 employment until they've secured employment and  
26 is subsequently unemployed through no fault of  
27 their own.

28 The determination includes a ruling pursuant

to NRS 612.551 which states the Employer's account will not be subject to charges. Any Employer who has paid 75 percent or more of a Claimant's base period wages has the right to protest charging of benefits paid to their account. The protest must be made within ten business days of the notice of determination, identify the Employers having contributed 75 percent of the base period wages.

The parties were advised that the additional issue pursuant to NRS 612.385 was that the Claimant's discharge was for reasons associated with misconduct would also be addressed. Misconduct is not specifically defined by statute. However, the Nevada Supreme Court has ruled that the Claimant's actions must contain an element of wrongfulness. The Employer must also substantiate by a preponderance of evidence willful and deliberate misconduct on the Claimant's behalf in order for disqualification of benefits to occur.

This is your only evidentiary hearing required by law on these issues which means it's your last opportunity to submit new evidence. All testimony is required to be taken under oath. The hearing is being tape recorded and within two weeks from today's hearing date, you will receive a written decision by mail. Three parties may

1 appeal that decision if they disagree. Yourself,  
2 Mr. Murphy, the Employer as well as the local  
3 unemployment office.

4 The notice of hearing advised all parties  
5 they had the right to review the documents of the  
6 appeal file and did you receive a mailed packet  
7 of exhibits with today's notice hearing letter,  
8 Ms. Robertson?

9 ROBERTSON: Yes, I have.

10 PARKER: And looking at the notice of hearing letter, is  
11 this still the accurate mailing address on behalf  
12 of the Employer?

13 ROBERTSON: Yes, it is.

14 PARKER: Thank you. Mr. Murphy, did you receive the mail  
15 packet of exhibits with today's notice of hearing  
16 letter?

17 MURPHY: Yes, I did.

18 PARKER: And looking at the notice of hearing letter, is  
19 this still your accurate mailing address?

20 MURPHY: Yes, it is.

21 PARKER: Thank you. At this time I'm required pursuant to  
22 NRS 612.500 of Nevada law to admit into the  
23 record those department documents which are  
24 material to the issues and these documents will  
25 be given whatever evidentiary weight that is  
26 appropriate.

27 Exhibits 1 and 2 are both computer printout  
28 screens from the local unemployment office.

1 Exhibit 3 is the Employer's notice of claim  
2 filed form and their response to the notice of  
3 claim filed.

4 Exhibits 4-A/4-B/4-C is the record of fact  
5 finding from the unemployment adjudication  
6 division on the discharge issues.

7 Exhibits 5-A/5-B is the notice of  
8 determination letter under appeal issued under  
9 the voluntary quit provision.

10 Exhibit 6-A is the Claimant's typed letter  
11 of appeal with signature dated June 28, 2013.  
12 Exhibit 6-B is the envelope postmarked July 1st,  
13 2013 in which the unemployment division received  
14 the Claimant's letter of appeal.

15 Any questions, Ms. Robertson, regarding the  
16 exhibits identified?

17 ROBERTSON: No, ma'am.

18 PARKER: Do you have any objection to the admittance into  
19 the record as evidence?

20 ROBERTSON: No, I do not.

21 PARKER: Any questions, Mr. Murphy, regarding the exhibits  
22 identified?

23 MURPHY: No.

24 PARKER: Do you have any objection to their admittance  
25 into the record as evidence?

26 MURPHY: Yes.

27 PARKER: What exhibit are you referring to as far as  
28 objection?

1 MURPHY: The objection is that it was told that I --  
2 PARKER: One moment, sir. What exhibits are you referring  
3 to in your exhibit packet?  
4 MURPHY: The first denial of benefits, exhibit --  
5 PARKER: The exhibit is the handwritten number on the  
6 stamp of the exhibit stamp in the right bottom  
7 corner of your document.  
8 MURPHY: Okay. So it'd be 13-A.  
9 PARKER: We don't have a 13-A, sir. What's does the top  
10 of the document read for identification purposes?  
11 MURPHY: Okay, it says -- at the top of the page it shows  
12 it's advising me that I was denied my benefits  
13 because of abandoning the job in the first  
14 letter.  
15 PARKER: Are you referring to the notice of determination,  
16 Exhibit 5-A/5-B mailed June 25th, 2013?  
17 MURPHY: Yes.  
18 PARKER: What is your objection to this document being  
19 admitted into the record as evidence?  
20 MURPHY: Because the person that I took in the information  
21 when I first talked to her, she had misquoted all  
22 the information that was said on the letter that  
23 was sent to me. And she was saying that I was  
24 arrested on outstanding warrants which was not  
25 true.  
26 PARKER: Okay. What you're stating in Exhibit 5-A, my  
27 question to you is relevancy of the exhibit first  
28 as to the reasons for the hearing. Is there a

1 specific exhibit that you have an objection to  
2 based on the content of the documentation  
3 concerning the reasons that you were terminated  
4 because --  
5 MURPHY: That's what I'm explaining.  
6 PARKER: Okay. Well, it's apparent that you're not  
7 agreeing with the determination because you filed  
8 an appeal. That's why we're having the hearing.  
9 MURPHY: Oh.  
10 PARKER: Is there a specific exhibit that you have an  
11 objection to is my question as being admitted  
12 into the record as evidence based on the document  
13 and its relevancy to today's hearing procedures?  
14 MURPHY: Okay. That's what I needed -- you want more  
15 understanding of it.  
16 PARKER: Any objection that you have to any other  
17 exhibits?  
18 MURPHY: No.  
19 PARKER: All right. I'll note for the record your  
20 objection to Exhibit 5-A/5-B being admitted into  
21 the record as being overruled in that the  
22 documentation is the actual notice of  
23 determination on your appeal. With that,  
24 Exhibits 1 through 6-B have been admitted.  
25 (Exhibit numbers 1 through 6-B received into evidence.)  
26 PARKER: Mr. Donahue, I'm going to place you under oath at  
27 this time.  
28 DONAHUE: Yes.

1 (Joseph Donahue sworn)

2 PARKER: Mr. Donahue, sir.

3 DONAHUE: Yes, I understand.

4 PARKER: Do you swear or affirm under the penalty of

5 perjury that the testimony you provide today will

6 be the truth and nothing but the truth?

7 DONAHUE: Yes, I do.

8 PARKER: For the record will you please state your name,

9 spell your name and state your position with the

10 Employer?

11 DONAHUE: My name Joseph G. Donahue, that's J-O-S-E-P-H,

12 middle initial G, last name D-O-N-A-H-U-E.

13 Maintenance supervisor for Greystone Park

14 Apartments.

15 PARKER: What was the date of hire for Mr. Murphy with

16 your company?

17 DONAHUE: July 13th, 2011.

18 PARKER: What was the effective separation date of the

19 employment?

20 DONAHUE: June 10th, 2012.

21 PARKER: What position was Mr. Murphy employed at the time

22 of the separation?

23 DONAHUE: He was a maintenance worker. He did repairs and

24 turns for our apartments.

25 PARKER: Was his employment full time?

26 DONAHUE: Yes, it was.

27 PARKER: What was his last physical date of work where he

28 completed his full shift?



1 DONAHUE: One second please.  
2 PARKER: All right. Hello.  
3 DONAHUE: Last full day of employment was June 1st, 2012.  
4 PARKER: Was Mr. Murphy discharged by Greystone Park  
5 Apartments?  
6 DONAHUE: No.  
7 PARKER: Did Mr. Murphy resign from his position?  
8 DONAHUE: I don't know that answer.  
9 PARKER: Were you involved in the separation of Mr. Murphy  
10 in regard to the incident that led to the  
11 separation?  
12 DONAHUE: No.  
13 PARKER: What was the reason for Mr. Murphy's separation?  
14 DONAHUE: From what I understand, on Monday, the 4th when  
15 he didn't show and we were told that --  
16 PARKER: The 4th of?  
17 DONAHUE: -- he was incarcerated by the Nevada police and  
18 I'm assuming that my management or supervisor  
19 terminated him then.  
20 PARKER: When you state the 4th, what month and year are  
21 you referring to, sir?  
22 DONAHUE: Oh, I'm sorry, June 4th, 2012.  
23 PARKER: Was Mr. Murphy scheduled to report to work June  
24 4, 2012?  
25 DONAHUE: Yes, that is correct.  
26 PARKER: Did Mr. Murphy work a set schedule as a full time  
27 employee?  
28 DONAHUE: Yes, he did.

1 PARKER: What was his shift?  
2 DONAHUE: Monday through Friday, 8:00 a.m. to 4:30 p.m.  
3 PARKER: Who contacted the Employer advising them the  
4 Claimant was incarcerated?  
5 DONAHUE: I was informed through the manager of the  
6 building where he lives on Monday, June 4th,  
7 2012.  
8 PARKER: Who was that manager?  
9 DONAHUE: Her name was Judy Webb.  
10 PARKER: Was Ms. Webb employed with Greystone Park  
11 Apartments?  
12 DONAHUE: Yes.  
13 PARKER: What was her title with the Employer?  
14 DONAHUE: She was the manager of the complex called  
15 Lynnwood Place where Mr. Murphy lives.  
16 PARKER: Was Lynnwood Place a property owned by Greystone  
17 Park Apartments?  
18 DONAHUE: Yes, that is correct.  
19 PARKER: What did Ms. Webb inform you on June 4th, 2012?  
20 DONAHUE: I ran over to see if Calvin was at home or has  
21 she seen him because he didn't report to work.  
22 At that time she told me that he was incarcerated  
23 on -- or Saturday morning early by Metro Police  
24 of Nevada and that he probably won't be in.  
25 PARKER: Saturday, what date?  
26 DONAHUE: No, Monday, June 4, 2012.  
27 PARKER: All right. You indicated that Ms. Webb informed  
28 you that Mr. Murphy was incarcerated on Saturday.

1 DONAHUE: Well she told me Monday that he was incarcerated  
2 on Saturday morning.  
3 PARKER: On Saturday, what was that date that you're  
4 referring to that the Claimant was incarcerated?  
5 DONAHUE: June 2nd, 2012.  
6 PARKER: Did you question Ms. Webb how she became aware of  
7 this information?  
8 DONAHUE: She told me that Calvin's girlfriend told her.  
9 PARKER: Did Ms. Webb identify who the Claimant's  
10 girlfriend was that gave her this information?  
11 DONAHUE: Yes, she said Tina.  
12 PARKER: Did you or anyone else with Greystone Park  
13 receive any contact from the Claimant in regards  
14 to his inability to report to work as scheduled  
15 for June 4, 2012?  
16 DONAHUE: I only have hearsay that my manager was told. I  
17 was not there when she was told. It's only  
18 hearsay.  
19 PARKER: Who is your manager?  
20 DONAHUE: Her name was Inez. I really don't remember her  
21 last name.  
22 PARKER: Is she still employed with the Employer?  
23 DONAHUE: No, she's not.  
24 PARKER: All right. And who did you hear it from? Did  
25 you get the record from the manager Inez?  
26 DONAHUE: From the manager, yes, later that morning. June  
27 4th.  
28 PARKER: What did the manager Inez tell you?

1 DONAHUE: That Mr. Murphy was incarcerated by the Nevada  
2 police and that he won't be in.  
3 PARKER: What time was this conversation?  
4 DONAHUE: I don't know exactly. I want to say somewhere  
5 between 10:00 and 11:00 a.m. on June 4th of 2012.  
6 PARKER: And looking at Exhibit 3, the Employer's response  
7 to the unemployment division's request for  
8 information concerning the Claimant's employment  
9 and separation, the documentation shows the  
10 Claimant was discharged for a no call/no show.  
11 Is this accurate?  
12 DONAHUE: Yes, that's what I was told.  
13 PARKER: And who were you told this by?  
14 DONAHUE: My previous manager Inez Cabrerra.  
15 PARKER: What date was Mr. Murphy considered a no call/no  
16 show?  
17 DONAHUE: On June 4th, 2012.  
18 PARKER: Was this the final or specific incident that went  
19 to the separation?  
20 DONAHUE: Yes.  
21 PARKER: Did anyone contact the Employer on Mr. Murphy's  
22 behalf after June 4, 2012?  
23 DONAHUE: I cannot answer that question. I do not know the  
24 answer.  
25 PARKER: Was Mr. Murphy scheduled for any additional days  
26 after June 4, 2012 that he did not report?  
27 DONAHUE: No.  
28 PARKER: You testified earlier that Mr. Murphy was a full

1 time employee with a set schedule Monday through  
2 Friday, 8:00 a.m. to 4:30 p.m. Why was he not  
3 considered on the schedule after June 4, 2012?  
4 DONAHUE: Well my manager told me it was because of being a  
5 no call/no show on Monday, that he was done.  
6 PARKER: Is there a reason that the employment was not  
7 severed until June 10 of 2012 if the manager  
8 considered him quote unquote done on June 4,  
9 2012?  
10 DONAHUE: I assume because of payroll. But like I said,  
11 I'm mainly out on the property and a lot of these  
12 (indiscernible) I'm not involved in.  
13 PARKER: Did you or anyone with the Employer ever receive  
14 any contact from the Claimant once he was  
15 released from jail?  
16 DONAHUE: When he was released I saw him, personally I saw  
17 him and say hi, how you doing. That's as far as  
18 our conversation was.  
19 PARKER: And when was this conversation?  
20 DONAHUE: I'll guess it's a day or two after Mr. Murphy was  
21 released and I do not know the date.  
22 PARKER: Do you know the Claimant's release date?  
23 DONAHUE: I'm sorry.  
24 PARKER: Do you know Mr. Murphy's release date from jail?  
25 DONAHUE: No, I do not.  
26 PARKER: Was there a policy violated that led to the  
27 termination?  
28 DONAHUE: Yes, no call/no show, Nevada state law.

1 PARKER: What Nevada state law is in regards to no call/no  
2 show?  
3 DONAHUE: If you're a no call/no show, then they can make  
4 him be terminated on that date.  
5 PARKER: What law are you referring to?  
6 DONAHUE: I assume it's just company policy. I don't  
7 personally have the paperwork in front of me.  
8 That's what I've been told ever since I came out  
9 in Vegas in 2006.  
10 PARKER: Does the Employer have a policy in writing  
11 regarding no call/no shows?  
12 DONAHUE: Yes, it's in our contract.  
13 PARKER: What does the contract state?  
14 DONAHUE: You're asking me something that I can't quote  
15 word for word. I read my policy seven years ago.  
16 I don't remember it word for word.  
17 PARKER: What statute are you referring to that is in  
18 regards to the no call/no show?  
19 DONAHUE: In our contract handbook, it states if you're a  
20 no call/no show, then we as the company have the  
21 right to let you go on that day.  
22 PARKER: How was Mr. Murphy made aware of the no call/no  
23 show policy that you've referred to?  
24 DONAHUE: Again, I cannot answer that. It was up to my  
25 manager.  
26 PARKER: Okay. Did all employees receive handbooks at the  
27 time of hire?  
28 DONAHUE: Yes, we do. Yes, they did.

1 PARKER: Did Mr. Murphy have any prior written verbal  
2 warnings for any similar infractions involving a  
3 no call/no show?  
4 DONAHUE: No, ma'am.  
5 PARKER: Those are my questions for Mr. Donahue. Any  
6 questions for him, Ms. Robertson?  
7 ROBERTSON: Sorry, say again?  
8 PARKER: Any questions for Mr. Donahue?  
9 ROBERTSON: Not at this time.  
10 PARKER: Any questions for Mr. Donahue, Mr. Murphy?  
11 MURPHY: Yes, I do.  
12 PARKER: Proceed.  
13 MURPHY: As for a witness, my girlfriend Tina --  
14 PARKER: Make sure you're posing a question, sir.  
15 MURPHY: My girlfriend Tina actually informed Ms. Cabrerra  
16 --  
17 PARKER: You're making a statement, Mr. Murphy. Make sure  
18 you're asking Mr. Donahue a question.  
19 MURPHY: Oh. Oh, okay. On Saturday, June 2nd, Mr.  
20 Donahue, did Tina talk to Ms. Cabrerra and told  
21 her about me being incarcerated?  
22 DONAHUE: I do not have that answer. I do not know.  
23 MURPHY: Okay. And she talked to you.  
24 DONAHUE: No, definitely not.  
25 MURPHY: That's all I have to say to him.  
26 PARKER: One moment. I'm going to place you under oath at  
27 this time, Mr. Murphy.  
28 MURPHY: Say that again?

1 PARKER: I'm going to place you under oath at this time.  
2 MURPHY: Okay.  
3 (Calvin Murphy sworn)  
4 PARKER: What was your date of hire with Greystone Park  
5 Apartments?  
6 MURPHY: It was July 13th, 2011.  
7 PARKER: What was your effective separation date from  
8 them?  
9 MURPHY: My effective separation date was June 4th, 2012.  
10 PARKER: What position were you employed in at the time of  
11 separation?  
12 MURPHY: Apartment maintenance.  
13 PARKER: Was this considered full time employment?  
14 MURPHY: Yes, it was.  
15 PARKER: What was the last date you worked your full  
16 shift?  
17 MURPHY: June 1st.  
18 PARKER: Of 2012?  
19 MURPHY: 2012.  
20 PARKER: Did you quit your position as maintenance  
21 employee?  
22 MURPHY: Yes, I was.  
23 PARKER: Did you quit your position?  
24 MURPHY: No, I didn't.  
25 PARKER: What were you referring to yes, I was before when  
26 you said yes, I was?  
27 MURPHY: I was employed, you asked me was I employed full  
28 position.



1 PARKER: Were you discharged by the Employer?  
2 MURPHY: Yes, I was.  
3 PARKER: On what date were you notified of your  
4 termination?  
5 MURPHY: I wasn't told at any time that I was discharged  
6 until my girlfriend had wrote me in a letter and  
7 that they no longer wasn't going to hold my job  
8 no more.  
9 PARKER: Did you work a set scheduled shift with the  
10 Employer?  
11 MURPHY: Repeat that again?  
12 PARKER: Did you work a set scheduled shift with the  
13 Employer?  
14 MURPHY: Yes, I did.  
15 PARKER: And what was that shift?  
16 MURPHY: From 8:00 a.m. to 4:30 p.m.  
17 PARKER: What days of the week?  
18 MURPHY: Monday through Friday.  
19 PARKER: After June 1st, 2012, what was your next  
20 scheduled day of work?  
21 MURPHY: It was going to be June 4th, 2012.  
22 PARKER: On June 4th, 2012, did you report to work as  
23 scheduled?  
24 MURPHY: No, my girlfriend had informed the manager at  
25 that time, Inez Cabrerra, that I wasn't going to  
26 be in because of the incarceration.  
27 PARKER: Your girlfriend's name for the record?  
28 MURPHY: Tina Watkins.

1 PARKER: On what date did Ms. Watkins hold this  
2 conversation with Ms. Cabrerra?  
3 MURPHY: 2nd of June, 2012.  
4 PARKER: On what date were you incarcerated?  
5 MURPHY: June 1st, 2012.  
6 PARKER: At what time?  
7 MURPHY: At 10:30 p.m.  
8 PARKER: What date were you released from jail?  
9 MURPHY: June 3rd, 2013.  
10 PARKER: Were you in jail for over a year?  
11 MURPHY: A year.  
12 PARKER: Is that a yes or a no?  
13 MURPHY: Just one year.  
14 PARKER: Okay. What was the reason that led to your  
15 incarceration?  
16 MURPHY: My reason for incarceration was possession of  
17 stolen property.  
18 PARKER: Was that -- were you in possessing of stolen  
19 property on October, correction on June 1st of  
20 2012 at the time of the arrest?  
21 MURPHY: No.  
22 PARKER: Was it a prior charge of possession of stolen  
23 property?  
24 MURPHY: Yes, it was.  
25 PARKER: And when was that charge made?  
26 MURPHY: That charge was made 11 months after both of them  
27 received that stolen property and that happened  
28 April 2011.

1 PARKER: Did you appear before a judge or magistrate  
2 regarding the possession of stolen charges?  
3 MURPHY: No, I didn't until after I was arrested.  
4 PARKER: Were you ever arrested in 2011 for the charges of  
5 possession of stolen property?  
6 MURPHY: No, I wasn't.  
7 PARKER: Were you ever cited by the police for possession  
8 of stolen property?  
9 MURPHY: No, I wasn't.  
10 PARKER: If you had never been arrested for possession of  
11 stolen property and you had never been cited for  
12 possession of stolen property, what led to your  
13 arrest for the charge of June 1st of 2012?  
14 MURPHY: At the time it was told -- at the time they had  
15 came to retrieve the stolen property, they said  
16 that that was later -- I was later charged with  
17 by the DA's office and this was much later.  
18 PARKER: When were you charged by the district attorney's  
19 office?  
20 MURPHY: It was -- at that time, this was 11 months later.  
21 So they had to be from April -- it had to be in  
22 May of 2012.  
23 PARKER: What were you charged with by the district  
24 attorney in May of 2012?  
25 MURPHY: Possession of stolen property.  
26 PARKER: And why were you actually arrested on June 1st of  
27 2012?  
28 MURPHY: At the time I was stopped on my bike and I was on

1 my way with no lights on it and I was pulled over  
2 and at the time they was asking me questions,  
3 they was running a background check and they said  
4 that I had an arrest warrant.  
5 PARKER: When you say they, who are you referring to?  
6 MURPHY: Metro -- Las Vegas Metro Police Department.  
7 PARKER: What was the warrant for?  
8 MURPHY: Possession of stolen property.  
9 PARKER: Was it for the same charges that you were charged  
10 with by the district attorney office back in May  
11 of 2012 that this warrant was issued on?  
12 MURPHY: Yes.  
13 PARKER: Did you know the warrant had been issued out on  
14 you?  
15 MURPHY: No, I didn't.  
16 PARKER: Had you missed any assigned court dates in  
17 regards to the charge of possession of stolen  
18 property that would have led to the warrant?  
19 MURPHY: I never had any.  
20 PARKER: What was the basis for the warrant being issued?  
21 MURPHY: Can you repeat that?  
22 PARKER: What was the reason or basis for the warrant  
23 being issued?  
24 MURPHY: The reason that the warrant was issued because of  
25 as they said that it was reported stolen and then  
26 later on that the DA had picked it up after they  
27 had the victim write out a report saying that it  
28 was stolen and then later on they had found out

1                   that I wasn't the one who stole it, but I was the  
2                   one who had received it. Who had had it in my  
3                   possession.  
4   PARKER:        Why were you in jail for one year?  
5   MURPHY:        Because of the possession of stolen property and  
6                   they gave me one year.  
7   PARKER:        Were you actually charged with the possession of  
8                   stolen property where your sentencing was a year  
9                   of jail time?  
10   MURPHY:       Yes, it was.  
11   PARKER:       Did you or anyone else contact the Employer after  
12                   October (sic) 2nd, 2012 to advise them when you  
13                   or you would be missing any further dates of  
14                   work?  
15   MURPHY:       Was it me or --  
16   PARKER:       Did you or anyone on your behalf contact the  
17                   Employer after June, correction, 2nd of 2012 to  
18                   advise them that you would not be reporting to  
19                   work as scheduled?  
20   MURPHY:       Yes.  
21   PARKER:       Who did?  
22   MURPHY:       Tina Watkins.  
23   PARKER:       On what date?  
24   MURPHY:       On the 5th or 4th, matter of fact on the 4th of  
25                   June she had let her know that I was still  
26                   incarcerated.  
27   PARKER:       Let who know?  
28   MURPHY:       Ms. Cabrerra.

1 PARKER: Did Ms. Watkins inform Ms. Cabrerra of a release  
2 date for you?  
3 MURPHY: She couldn't have.  
4 PARKER: And why -- is there any reason why she could not  
5 have?  
6 MURPHY: Because at the time I was still going back and  
7 forth to court and at that time she couldn't have  
8 known because I was released from the job after  
9 -- at the time that I wasn't getting out. And  
10 that was like after the 10th of June.  
11 PARKER: June 10th of what year?  
12 MURPHY: 2012.  
13 PARKER: And what did you find out specifically on June 10  
14 of 2012?  
15 MURPHY: Because I had went to a preliminary hearing and I  
16 was charged with possession of stolen property  
17 and I didn't have no bail money to bail out on a  
18 \$40,000 bail. So I couldn't go nowhere.  
19 PARKER: What was the bail amount?  
20 MURPHY: 40,000.  
21 PARKER: Were you aware of the Employer's no call/no show  
22 policy?  
23 MURPHY: Not at that time, no.  
24 PARKER: Did you receive a company handbook at the time of  
25 hire?  
26 MURPHY: Yes, I did.  
27 PARKER: Did it contain the no call/no show policy in it?  
28 MURPHY: I didn't read that on its behalf.

1 PARKER: Did you read the handbook at all?

2 MURPHY: Yes, I did. Matter of fact, we had to -- we had

3 talked about it, me and the supervisor about that

4 situation of not calling in and it was talked

5 over between me and my supervisor Joe. If you

6 don't call in, you can't be released from not

7 calling in.

8 PARKER: When was that conversation held with you with the

9 supervisor Joe.

10 MURPHY: That was in 2011 at the time of being hired.

11 PARKER: And what was Joe's last name?

12 MURPHY: I can't pronounce it.

13 PARKER: Can you spell it?

14 MURPHY: No, I can't spell his name.

15 PARKER: All right. Were you then aware of the -- strike

16 that. Were you aware of the no call/no show

17 policy that if you did not call in, you could be

18 let go or released verbally by the supervisor

19 Joe?

20 MURPHY: Yeah.

21 PARKER: Is that a yes or no when you say yeah?

22 MURPHY: That's a yes.

23 PARKER: Did you have any prior written or verbal warnings

24 from any similar infractions involving no call/no

25 shows?

26 MURPHY: No, ma'am.

27 PARKER: What was the last date you or someone on your

28 behalf contacted the Employer in regards to your

1 inability to report to work?

2 MURPHY: It was Tina Watkins on June 2nd, 2012.

3 PARKER: After June 2nd of 2012, was there any further

4 contact from you or anyone else on your behalf to

5 the Employer to advise them that you would not be

6 able to report to work as scheduled?

7 MURPHY: Yes, it was. It was Tina Watkins.

8 PARKER: On what date?

9 MURPHY: June 7th or 8th.

10 PARKER: Were you present when Ms. Watkins made the

11 contact?

12 MURPHY: No, I wasn't.

13 PARKER: Do you know who Ms. Watkins spoke to?

14 MURPHY: She talked to Ms. Cabrerra. And Joe.

15 PARKER: If you were not present, how do you know there

16 was a contact by Ms. Watkins on June 7 or June

17 8th of 2012?

18 MURPHY: She writes me all the time. She was writing me

19 all the time.

20 PARKER: What was the contact between Ms. Watkins and Ms.

21 Cabrerra and the supervisor Joe on June 7 or 8 of

22 2012?

23 MURPHY: It was physical presence.

24 PARKER: What was she told?

25 MURPHY: She was -- she had delivered the message to them

26 to let them know that I wasn't going to be able

27 to return back to work.

28 PARKER: Did she give him a reason why?



1 MURPHY: She let them know -- she informed them to let  
2 them know that the reason why I was incarcerated.  
3 That she was to pick up my -- that I asked her to  
4 ask Ms. Inez Cabrerra could she pick up my check  
5 and they let her have it.  
6 PARKER: Did you ever contact the Employer to request any  
7 type of leave of absence to cover your  
8 incarceration period?  
9 MURPHY: No, I didn't have no way.  
10 PARKER: Did you ever instruct anyone on your behalf to  
11 contact the Employer to request leave of absence  
12 on your behalf while you were incarcerated?  
13 MURPHY: To instruct them how?  
14 PARKER: Did you ever instruct anyone on your behalf to  
15 contact the Employer to request a leave of  
16 absence for you?  
17 MURPHY: No.  
18 PARKER: Okay. Those are my questions for Mr. Murphy.  
19 Any questions for him, Ms. Robertson?  
20 ROBERTSON: Not at this time.  
21 PARKER: If you bring in your witness, Ms. Watkins, Mr.  
22 Murphy, so I can question her please.  
23 MURPHY: Yes, hold on one minute please.  
24 PARKER: All right. You guys need to be on the phone at  
25 the same time so you can hear my line of  
26 questioning as well.  
27 MURPHY: Okay. She's present.  
28 PARKER: Ms. Watkins, I'm going to place you under oath at

1                   this time.

2   WATKINS:        Okay.

3                   (Tina Watkins sworn)

4   PARKER:        For the record, will you please state your name,  
5                   spell your name and state your relationship to  
6                   Mr. Murphy?

7   WATKINS:        Okay, I go by Tina, but my first name is Aitelia,  
8                   A-I-T-E-L-I-A, middle initial J, last name  
9                   Watkins, W-A-T-K-I-N-S. And I'm his live in  
10                  girlfriend.

11   PARKER:        Did you contact the Employer Greystone Park  
12                  Apartments on Mr. Murphy's behalf in regards to  
13                  his inability to report to work?

14   WATKINS:        Yes, I did.

15   PARKER:        On what date?

16   WATKINS:        He got arrested that Friday evening. I was over  
17                  there that Saturday morning, June 2nd, spoke with  
18                  Inez. I saw Joe, he was leaving the office going  
19                  somewhere and I just said Calvin's in jail,  
20                  that's all I said to him. But I went inside and  
21                  explained the whole thing to Inez. She told me  
22                  to keep her informed. I asked is there any way  
23                  to hold the job for him. She said if he's not  
24                  going to be there you know a long time, maybe a  
25                  day or two. But I told her I didn't know. She  
26                  told me to keep her informed.

27   PARKER:        Did you have any further contact with anyone with  
28                  the Employer on behalf of Mr. Murphy after June

1 2nd of 2012?

2 WATKINS: Yes, getting close to payday when I found out  
3 that he would be going back and forth to court  
4 and I knew that he wouldn't be able to pick up  
5 his check and I needed to pay bills. I went back  
6 over there and I talked with Inez about picking  
7 up his check. She told me no problem, that since  
8 she knows who I am that I could come pick up his  
9 check. And the day I went to pick up his check,  
10 she had just left. Joe was there leaving the  
11 office. I asked him to give me the check. He  
12 says yeah, he said because Inez said that I could  
13 have it and Joe gave me his check, his last  
14 check.

15 PARKER: On what date was this?

16 WATKINS: That was payday, two weeks after. I'm not sure  
17 what that was. If it was the 14th or what. I'm  
18 not sure.

19 PARKER: On what date did you speak to the manager Inez  
20 Cabrerra?

21 WATKINS: I went over there I think it was right after the  
22 10th, because he found out he wasn't getting out  
23 and going to court. I'm not real sure of the  
24 date exactly. But I did go there and talk to her  
25 and she just told me to keep her informed and  
26 that's when I asked could I pick up his check  
27 payday because it looked like he wasn't going to  
28 be there. This was going to be the following

1 Friday.

2 PARKER: And when you say after the 10th, what month are

3 you referring to and year?

4 WATKINS: Of June 2012.

5 PARKER: What did you find out after June 10th of 2012

6 regarding Mr. Murphy's incarceration?

7 WATKINS: That the charge was that he was being held on,

8 found out what the bail was and that he would be

9 going back and forth to court. So I knew he

10 wouldn't be out to pick up his check.

11 PARKER: Did you ever give anyone with Greystone Park

12 Apartments a definite release date from jail for

13 Mr. Murphy?

14 WATKINS: No, ma'am, I had no way of knowing. He was still

15 going back and forth to court. So I had no way

16 of knowing anything.

17 PARKER: Those are my questions for your witness. Any

18 questions for her, Mr. Murphy?

19 MURPHY: I don't.

20 PARKER: Any questions for the witness, Ms. Robertson?

21 ROBERTSON: Yes, I do have a question for her.

22 PARKER: Okay.

23 ROBERTSON: It says on Exhibit 6-A in the letter from Calvin

24 to appeal the denial of unemployment letter that

25 they wrote or that he wrote, it says that Mrs.

26 Watkins said that she advised Joe on a Saturday.

27 Joe doesn't work on Saturdays. So there's no

28 possible way that could have happened.

1 PARKER: Make sure you're posing a question please.

2 ROBERTSON: The question is are you sure that you spoke with  
3 Joe on that Saturday that is reflected in this  
4 letter, stated in this letter?

5 WATKINS: Yes, I am. I don't know if he was working or  
6 what, but he was coming out of the office when I  
7 went to talk with Inez. I don't know whether he  
8 was working or not.

9 ROBERTSON: Okay. No further questions at this time.

10 PARKER: Thank you, Ms. Watkins. You can disconnect or  
11 leave the area.

12 WATKINS: Okay, I'll give you back to Mr. Murphy.

13 PARKER: Is there anything, Mr. Donahue, you feel we have  
14 not covered in your testimony that's relevant and  
15 you'd like to add?

16 DONAHUE: No, everything is okay.

17 PARKER: All right. Would you like to give a closing  
18 statement on behalf of the Employer, Ms.  
19 Robertson, as to why you believe benefits should  
20 or should not be allowed?

21 ROBERTSON: I'm neutral on that.

22 PARKER: All right. Is there anything, Mr. Murphy, you  
23 feel we have not covered in your testimony that's  
24 relevant and you would like to add?

25 MURPHY: I'm okay.

26 PARKER: Would you like to give a closing statement  
27 explaining why you believe benefits should be  
28 allowed?

1 MURPHY: Yes, I would.

2 PARKER: Proceed.

3 MURPHY: For the statements that were said and the letters  
4 I received, there was a lot of misunderstanding  
5 about what was told about me leaving the job.  
6 And I think that by having this hearing that  
7 everything come to the true understanding and the  
8 truth. And I'm thinking that I am well deserving  
9 of my benefits.

10 PARKER: Anything else?

11 MURPHY: But I just want to comment on Valerie saying that  
12 Joe don't work on Saturdays. I've been working  
13 with Joe just about a full year and I know that  
14 Joe works on emergency calls or whatever and if  
15 it was a Saturday or a Sunday or whatever, Joe  
16 his responsibility is to show up to the job. So  
17 the comment that she had made towards Ms. Watkins  
18 was (indiscernible) because Joe is on a 24-hour  
19 call period because he is a supervisor. And he  
20 does show up even at 2:00 in the morning. So him  
21 being there on a Saturday, it wouldn't be no  
22 surprise to anyone that's around that complex.  
23 So I just wanted to let you know that Joe is a  
24 supervisor that is on a 24-hour call so even if  
25 he doesn't have a scheduled day to work on  
26 Saturdays, he's still on emergency call. So any  
27 day it's possible Joe will be there.

28 PARKER: Okay. Anything else besides your closing?

1 MURPHY: That's it.

2 PARKER: All right. If that's all, the hearing is  
3 adjourned and you will receive your decisions by  
4 mail. Thank you all for your time.

5 ROBERTSON: Thank you. Have a great day.

6 PARKER: You, too, bye bye.

7 (END OF HEARING)

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Murphy

HEARING SLIP

TAPE # Digital

DATE: 7/30 TIME: 10:30 CASE NO.: 1-BA-07539

REFEREE: Parker

CLAIMANT ✓ ATTY/REP/UNION AGENT

WITNESS(ES): (1) Lisa Watkins, girlfriend  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_

OBSERVER: \_\_\_\_\_

COURT INTERPRETER: \_\_\_\_\_

DIVISION REPRESENTATIVE: \_\_\_\_\_

EMPLOYER INFORMATION

EMPLOYER REP/AGENT: Valerie Robertson

ATTORNEY: \_\_\_\_\_

OBSERVER: \_\_\_\_\_

WITNESS(ES): (1) Joseph Donahue  
(2) \_\_\_\_\_  
(3) \_\_\_\_\_ (4) \_\_\_\_\_  
(5) \_\_\_\_\_ (6) \_\_\_\_\_

NOTES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



# ISSUES

<input type="checkbox"/>	AB	375	Able	<input type="checkbox"/>	PN	375	Pension
<input type="checkbox"/>	AL	448	Alien Status	<input type="checkbox"/>	PV	425	Paid Vacation
<input type="checkbox"/>	AM	344	Alternate Monetary	<input type="checkbox"/>	RR	375	Reporting Requirements
<input type="checkbox"/>	AT	375	Approved Training	<input checked="" type="checkbox"/>	RU	551	Ruling
<input type="checkbox"/>	AV	375	Available	<input type="checkbox"/>	RW	390	Refusal of Work
<input type="checkbox"/>	BP	371	Back Pay	<input type="checkbox"/>	SA	436	Sport/Athletic Wages
<input type="checkbox"/>	BT	434	Between Terms	<input type="checkbox"/>	SP	420	Severance Pay
<input type="checkbox"/>	CR	383	Gross Misconduct	<input type="checkbox"/>	TD	375/185	Temporary Disability
<input checked="" type="checkbox"/>	DC	385	Discharge	<input type="checkbox"/>	TX	085	Tax Case
<input type="checkbox"/>	DD	375	Double Dip	<input type="checkbox"/>	UN	375/185	Unemployed
<input type="checkbox"/>	EF	475	Employer Response	<input type="checkbox"/>	UT	495	Untimely Appeal
<input type="checkbox"/>	ER	375	Eligibility Requirements	<input type="checkbox"/>	VP	430	Vacation Pay
<input type="checkbox"/>	ER	375	Eligibility Requirements-ID Issue	<input checked="" type="checkbox"/>	VQ	380	Voluntary Quit
<input type="checkbox"/>	EU	PL 110-252	Extended Benefits	<input type="checkbox"/>	VR	432	Vacation/Holiday Recess
<input type="checkbox"/>	FR	445	Fraud	<input type="checkbox"/>	VW	380	Quit for Other Work
<input type="checkbox"/>	LA	375/185	Leave of Absence	<input type="checkbox"/>	WL	420	Wages in Lieu of Notice
<input type="checkbox"/>	LD	395	Labor Dispute	<input type="checkbox"/>	WP	375	Worker Profiling
<input type="checkbox"/>	MO	375	Monetary	<input type="checkbox"/>	Other		
<input type="checkbox"/>	MR	445	Misrepresentation				
<input type="checkbox"/>	OP	365	Overpayment				

\*\*\*\*\*

<input checked="" type="checkbox"/>	Claimant Appeal	<input type="checkbox"/>	Spanish Interpreter Required
<input type="checkbox"/>	Employer Appeal	<input type="checkbox"/>	_____ Interpreter Required
<input type="checkbox"/>	Green Dot Employer	<input type="checkbox"/>	Notify Appeals if Interpreter Required

Provide a cc to: \_\_\_\_\_

\_\_\_\_\_

\*\*\*\*\*

TIME:

10:30

## COMMENTS

STATE OF NEVADA  
DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
OFFICE OF APPEALS  
Voice: (702) 486-2806  
FAX: (702) 486-2807

NOTICE OF TELEPHONE HEARING

CALVIN S MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS, NV 89109

CASE NUMBER: V-13-A-07539

DATE MAILED: JULY 16, 2013

CLAIMANT'S SSN:

REFEREE: PARKER / AB

Claimant Appeal

# 210  
GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS, NV 89118

Valerie Robertson  
702-735-3308

ALL PARTIES INVOLVED IN THIS HEARING  
WILL PARTICIPATE BY TELEPHONE.

PURSUANT TO NRS 612.500, A TELEPHONE  
HEARING WILL BE HELD ON:

DATE: TUESDAY JULY 30, 2013  
TIME: 10:30 AM PDT

CLAIMANT: On the hearing date and time, the  
referee will call you at (909) 938-1576. If  
this number is incorrect, you must call either 702-  
486-2806 (toll free 1-888-729-7149), PRIOR to the  
hearing date, and provide the correct phone  
number.

Aviso: Esta notificación contiene información  
importante respecto a una audiencia de apelación  
sobre seguro de desempleo. Si tiene problemas  
para leer o comprender inglés puede contactar a un  
representante de la División de Seguridad de  
Empleo para asistencia con la traducción. Los  
números de teléfono son:

Norte de Nevada.....687-8148  
Sur de Nevada.....486-2957  
Línea Gratuita.....1-888-687-8147

EMPLOYER: At least 48 hours PRIOR to the  
hearing date, you must call 702-486-2806 (toll free  
1-888-729-7149) OR fax 702-486-2807 to provide  
the name of the individual to call and the telephone  
number to use for the hearing.

Have the mailed documents available as they will  
be used at the hearing.

THE FOLLOWING ISSUES WILL BE CONSIDERED:

NRS 612.380: Whether the claimant voluntarily quit with good cause.

NRS 612.551: Whether the employer's account is subject to charges.

NRS 612.385: Whether the claimant's discharge was for reasons of misconduct.

AT LEAST 48 HOURS PRIOR TO THE HEARING: Submit any additional evidence you intend to provide for the case, to both the Appeals office and any opposing party. This hearing is your only opportunity to present testimony, witnesses and documentation. Each party is entitled to be represented by an attorney, at their own expense and entitled to request that subpoenas be issued to compel witnesses to attend. The Referee will only issue subpoenas upon the showing of necessity. For more information, consult the enclosed pamphlet and review the enclosed file prior to the hearing. If you are scheduled for a telephone hearing but prefer to appear in person, please contact this office.

HAND DELIVERED  
EMP. SEC. DIV.

AUG 05 2013

LAS VEGAS  
APPEALS



STATE OF NEVADA

DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION

HAND DELIVERED  
EMP. SEC. DIV.

AUG 05 2013

LAS VEGAS  
APPEALS

NOTICE OF APPEAL TO APPEAL REFEREE

This form may be used if you wish to appeal a decision (determination) of the Nevada Employment Security Division. If you choose to appeal you must complete, sign, and return this form or ask the local office assistance. This appeal must be filed by the finality date shown on the determination. After processing this appeal form, a copy will be returned to you and other interested parties. The Appeals Office will schedule a hearing and advise you and other interested parties of the time and date. Hearings may be by telephone or in person. There is additional important information on the reverse side.

TO THE CLAIMANT: If you file an appeal: (1) Continue to file your weekly claims, and (2) Advise both the Appeals Office and Claims Office of any new address.

Claimant's name: <i>Calvin Murphy</i>	SSA No. <i>*</i>
Mailing Address <i>2606 Lynwood St Apt #6</i>	Telephone No. <i>702-938-1526</i>
City, State, Zip <i>Las Vegas, Nev 89109</i>	

TO THE PARTY FILING THE APPEAL: Employer ☐ or Claimant ☒ (check one)

State why you believe the determination is incorrect. SEE ATTACHED LETTER  
*statement are incorrect on Determination Letter and All Facts did not come out on Hearing Appeal.*

Look at the finality date on the determination. If you did not file by this deadline, explain the reason for the delay, in detail. SEE ATTACHED LETTER.

*Calvin Murphy*

Signature of Appellant

*8-5-2013*

Date

LOCAL OFFICE USE ONLY	
Date Determination was issued	Does claimant need interpreter? <input type="checkbox"/> yes <input type="checkbox"/> no
Issue(s)	If "YES," what language?
Issue(s)	Does employer need interpreter? <input type="checkbox"/> yes <input type="checkbox"/> no
Benefits <input type="checkbox"/> Denied <input type="checkbox"/> Allowed	If "YES," what language?
Postmarked date of appeal (if mailed)	Claimant is <input type="checkbox"/> Hearing Impaired
Date that appeal was filed (if in person)	<input type="checkbox"/> Speech Impaired <input type="checkbox"/> Slight impaired
	Employer is <input type="checkbox"/> Hearing Impaired
	<input type="checkbox"/> Speech Impaired <input type="checkbox"/> Slight impaired
	APPEAL RECEIVED BY:

Employer name	
Mailing Address	
City, State, Zip	

LOCAL OFFICE: Nevada Employment Security Division  
Northern Nevada Adjudication  
500 E. 3<sup>rd</sup> St.  
Carson City, NV 89116-1147  
Telephone: 702-486-7999

60

JA 070

EU-PS BENEFIT PAYMENT SUMMARY INQ DATE: 07/03/13

SSN: 0 PH: (909)938-1576 LO: 0163 BYB: 06/02/13 BYE: 05/31/14  
 NAME : CALVIN S MURPHY  
 AKA :  
 ADDRESS : 2606 LYNNWOOD ST #6  
 :  
 : LAS VEGAS NV 89109  
 RS DATE :  
 WORK SRCH : P  
 RTW :  
 ERP INTRVL: 00

LIAB ST : NV FIL METH: T OPEN ISS : 000 WBA: 210 AMT PAID: 0.00  
 CLM STAT: ACTIVE PROG CD : U1 ACTV DENL: 001 MBA: 3310 BALANCE : 3310.00

BWE	PAYMENT DATE	PAY/DQ	TOTAL AMT	ORIGNL EARN	FINAL EARN	OFFSET AMT	OVER PMNT	SCC	CLAIM ADJUST
07/06/13		OW	0.00	0.00	0.00	0.00	0.00		
06/29/13		DQ VQ	0.00	0.00	0.00	0.00	0.00		
06/22/13		DQ VQ	0.00	0.00	0.00	0.00	0.00		
06/15/13		DQ VQ	0.00	0.00	0.00	0.00	0.00		
06/08/13		DQ VQ	0.00	0.00	0.00	0.00	0.00		

F1=Help F2=Menu F3=Exit F4=Nav-next F8=SCROLL-WEEKS NEXT TRANS:  
 4-@ 1 Sess-1 10.131.152.5 TP01E898 3/7

RESTRICTED  
 NRS 612.265 LIMITS THE USE OF  
 THIS MATERIAL TO UNEMPLOYMENT  
 COMPENSATION LITIGATION EXCEPT  
 FOR SPECIFIED EXCEPTIONS  
 EXHIBIT  
 CASE NO. 13-A-07539

61

EU-EC

BENEFIT EMPLOYER CHARGE

INQ DATE: 07/03/13

SSN:

NAME: CALVIN S MURPHY

BYE: 05/31/14

ACCOUNT NAME: GREYSTONE PARK APARTMENTS 75% PERCENT START END  
MON CODE: 01 BASE - ACCT: TYPE: 01 1.00000  
PROG CODE: U1 CHARGE-ACCT: TYPE: 50 1.00000 06/08/13 05/31/14

ACCOUNT NAME: PERCENT START END  
MON CODE: BASE - ACCT: TYPE:  
PROG CODE: CHARGE-ACCT: TYPE:

ACCOUNT NAME: PERCENT START END  
MON CODE: BASE - ACCT: TYPE:  
PROG CODE: CHARGE-ACCT: TYPE:

ACCOUNT NAME: PERCENT START END  
MON CODE: BASE - ACCT: TYPE:  
PROG CODE: CHARGE-ACCT: TYPE:

F1=Help F2=Menu F3=Exit F4=Nav-next F8=SCROLL-EMPLOYERS NEXT TRANS  
4-@ 1 Sess-1 10.131.152.5 TP01E898 3/7

RESTRICTED  
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COMPENSATION LITIGATION EXCEPT  
FOR SPECIFIED EXCEPTIONS  
EXHIBIT 1-3-A-07539  
CASE NO.

Name: y-montes - Date: 7/3/2013 Time: 4:26:50 PM

JA 072



DEPARTMENT OF EMPLOYMENT, TRAINING AND REHABILITATION  
EMPLOYMENT SECURITY DIVISION  
EMPLOYER NOTICE OF CLAIM FILED

CLAIMANT: CALVIN MURPHY

SOC. SEC. #:  
SEP. DATE: 06/01/12  
EMPLOYER ACCT. #:

DATE 06/06/13

\*RETURN TO\* STATE OF NEVADA  
\*EMPLOYMENT SECURITY DIVISION  
\*NORTHERN NEVADA ADJUDICATION CENTER  
\*500 E THIRD STREET  
\*CARSON CITY, NEVADA 89713-0035

BASE PERIOD: 01/01/12 TO 12/31/12

BENEFITS FOR WHICH CLAIMANT IS ELIGIBLE:  
WEEKLY AMOUNT: \$210 MAXIMUM AMT: \$3,310

GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS NV 89118

POTENTIAL BENEFIT COST: \$3,310.00  
OR 100.000% OF ALL BENEFITS PAID  
FOR THE YEAR 06/02/13 TO 05/31/14.

YOUR	QTR 1/12	5,255.25
REPORTED	QTR 2/12	4,675.00
WAGES ARE:	QTR 3/12	0.00
	QTR 4/12	0.00
TOTAL		\$9,930.25

You are a LAST OR NEXT TO LAST EMPLOYER. This person has filed for unemployment benefits and reported the reason for separation as being fired. DISCHARGED DUE TO BEING INCARCERATED. To determine the claimant's eligibility, a statement is needed from you concerning the reason for separation. Please include any retirement, severance, wages in lieu of notice, or vacation payments, which were paid or are due to the claimant. Refer to the back of this form for an explanation of your rights and responsibilities.

1. Indicate separation reason: ☐ Quit ☒ Discharge ☐ Lack of work ☐ Leave of Absence

Dates Worked: 7-13-11 to 6-10-12

(a)(For Quit) Explain reasons: \_\_\_\_\_

(b)(For Discharge) Explain final incident causing discharge NO CALL NO SHOW

2. Will this person receive: Accrued Vacation Pay ☒ No ☐ Yes \$ \_\_\_\_\_ Date Paid \_\_\_\_\_

Severance Pay ☒ No ☐ Yes \$ \_\_\_\_\_ Date Paid \_\_\_\_\_

Wages in Lieu of Notice ☒ No ☐ Yes \$ \_\_\_\_\_ Date Paid \_\_\_\_\_

Gross Weekly Wages \$ 440.00 Number of hours worked each week? 40

Additional comments: Found out he had been incarcerated. I consider that

This completed form must be signed and returned to the above address by our close of business (5:00 p.m. PST) on the 11th calendar day from the date of mailing, to protect your rights in this eligibility decision. quit.

Contact Person Marie Johnston

Company Official Signature Calvin Murphree

Title Property Mgr.

Telephone 702-35-3308

Date 6-17-13

FOR FURTHER INFORMATION, CALL (775) 684-0302, OR (775) 684-0338.

(OVER)

THIS MATERIAL TO UNEMPLOYMENT  
COMPENSATION LITIGATION EXCEPT  
FOR SPECIFIED EXCEPTIONS  
EXHIBIT  
CASE NO. 13-A-07539

63

JA 073

Claimant Name: CALVIN MURPHY  
Social Security Number:  
Adj

## RECORD OF FACT FINDING DISCHARGE

Claimant **CALVIN MURPHY** SSN \_\_\_\_\_ Adj \_\_\_\_\_ Last/NTL ER **LER**  
Employer **GREYSTONE PARK APTS** Length employed with last employer **-1 YR**  
Misc Info: ☒ IC ☐ AC ☐ RC ☒ 75% Employer Employer Acct \_\_\_\_\_

### EMPLOYER:

Phone # **[702] 735-3308** Ext \_\_\_\_\_

Date/Time called **June 14, 2013; 10:31-**  
**KIANA LEASING AGENT TRANSFERS**  
**MGR**

Left message with **VALERIE MGR**

☒ 48 Hour Script and consequences given

Optional Date Given \_\_\_\_\_

Info Requested **QUESTIONS 1-7, 1-4 OR?/NO 606//TL//8002-SHE SAYS HE WENT TO JAIL FOR A LONG TIME-NCNS between LDW 060112 and 061012, SHE WILL NOTIFY ER/VQ NOT DC//48//8002//June 25, 2013; 10:00-UINV -DC BOX CHECKED W/QUALIFIED, VQ AT THE BOTTOM/DET TAKEN AS VQ//8002**

### EMPLOYER PROVIDED INFORMATION:

Date/Time Interviewed (If different) \_\_\_\_\_

606 on File? Yes ☒ No ☐

Person spoke to (position/title) \_\_\_\_\_

Dates of employment \_\_\_\_\_ to \_\_\_\_\_

Position \_\_\_\_\_

Days off \_\_\_\_\_ Shift worked \_\_\_\_\_

Rate of Pay \_\_\_\_\_

LDW

Number of hrs. wrkd p/week? \_\_\_\_\_

Add Info \_\_\_\_\_

Discharged by whom/date/time \_\_\_\_\_

1. Primary reason for discharge? (What reason was the claimant given for the discharge?)
2. What was the final incident and when did it happen? (What was the "final straw" that led to the discharge?)
3. What policy or rule was violated? Was claimant aware of policy? RESTRICTED  
THIS 612.255 LIMITS THE USE OF  
THIS MATERIAL TO UNEMPLOYMENT  
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FOR SPECIFIED EXCEPTIONS.
4. Prior incidents and/or warnings? If yes, dates, times and circumstances? **EXHIBIT  
V-13-A-07539**
5. Describe any efforts the claimant made to resolve the problem.
6. What was adverse effect on employer? (How did claimant's actions adversely affect your business? I.e. others had to work the shift, store was not opened as scheduled)
7. Was claimant told he/she could be discharged if the behavior continued? (If Yes, explain)

Separation Pay: Yes ☐ No ☐

Next Regular Paydays \_\_\_\_\_

and \_\_\_\_\_

☐ Vacation - Gross Amt \$ \_\_\_\_\_  
☐ Severance- Gross Amt \$ \_\_\_\_\_  
☐ WIL- Gross Amt \$ \_\_\_\_\_

Date Paid \_\_\_\_\_  
Date Paid \_\_\_\_\_  
Date Paid \_\_\_\_\_

No. of Hours Paid \_\_\_\_\_  
No. of Hours Paid \_\_\_\_\_  
No. of Hours Paid \_\_\_\_\_

64

JA 074

Claimant Name: CALVIN MURPHY  
Social Security Number:  
Adj:

**CLAIMANT:**

Phone # **[909] 938-1576** Ext  
Left message with  
☐ 48 Hour Script and consequences given  
Info Requested

Date/Time Called **June 14, 2013; 10:38-**

Optional Date Given

**CLAIMANT PROVIDED INFORMATION:**

Date/Time Interviewed (If different)

Claimant ID verified? Yes ☒ No ☐

Dates of employment **07/13/11** to **06/01/12**

Position **APT REPAIR**

Days off **S-S**

Shift worked **8A-4P**

Rate of Pay **11.00**

LDW **06/01/12**

Number of hrs. wrkd p/week? 40

Add Info **EBCD-DISCHARGED DUE TO  
BEING INCARCERATED**

Discharged by whom/date/time **NOT TOLD DC, HE WAS ARRESTED**

- Reason given for discharge? (What were you told by your employer as the reason for the discharge?)  
**HE WAS ARRESTED 060112-**
- Final incident (and date of incident)? (What happened to cause discharge (final straw)? When did it happen?)  
**ARRESTED FOR STOLEN PROPERTY-HAD GONE TO WARRANT-NOTHING TO DO WITH THIS PLACE//1 YR IN JAIL.**
- Witnesses? (Get names and positions)
- Prior incidents and/or warnings? If yes, date, times and circumstances **NONE**
- Name of person who gave warnings?
- Was a rule or policy violated? (Explain the policy, how it was violated and was the claimant aware of the policy.) **INCARCERATED**
- Describe any efforts the claimant made to resolve problem and prevent discharge? **HE WAS TOLD HE IS NOT REHIREABLE, PER OLD SUPERVISOR**

**Separation Pay:** Yes ☐ No ☒ Next two regular paydays? and

☐ Vacation -

Gross Amt \$

Date Paid

No. of Hours Paid

☐ Severance-

Gross Amt \$

Date Paid

No. of Hours Paid

☐ WIL-

Gross Amt \$

Date Paid

No. of Hours Paid

8. Was the claimant able and available to seek and accept full-time work? Yes ☒ No ☐  
If no, explain on attached fact-finding.

9. Was claimant advised of requirements of the law? Yes ☒ No ☐

10. Was claimant advised of appeal rights? Yes ☒ No ☐

**ADDITIONAL INFORMATION:** (Rebuttal, witness statements or other)

☐ Employer

☐ Claimant

☐ Other

Date/time called

Left message with

☐ 48 Hour Script and consequences given

Person Contacted

RESTRICTED  
THIS MATERIAL IS THE PROPERTY OF  
THE U.S. DEPARTMENT OF LABOR  
AND IS LOANED TO YOU BY THE  
BUREAU OF EMPLOYMENT  
COMPENSATION LITIGATION EXCEPT  
FOR SPECIFIED EXCEPTIONS  
EXHIBIT  
1-3-A-07539  
65

JA 075



Claimant Name: CALVIN MURPHY  
Social Security Number  
Adj

Info requested

Date/Time Interviewed (if different)

Statement:

**Other Additional Information** (Relating to this issue):

**BCNT,06/05/13,@166 GAP-CLMT WAS INCARCERATED FOR A YEAR AND WAS RELEASED  
BCNT,06/05/13, ON 060213**

Employer provided additional documents? Yes ☐ No ☐

Claimant provided additional documents? Yes ☐ No ☐

Department Representative

Date

Informal Determination Yes ☐ No ☒

Detect Date: **06/05/13**

NRS 612. **380**

Wk Date: **06/08/13**

Issue Eff. Date: **06/02/13**

Reason for Decision: **You advised at filing you were discharged due to incarceration. Your employer responded you quit due to job abandonment when you were incarcerated. You later acknowledged being incarcerated for a long duration due to outstanding warrants. Although a discharge was cited, based on the information in file, you are considered to have quit by job abandonment. Good cause for quitting available work has not been shown. Benefits are not allowed.**

Department Representative

Date

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EXHIBIT  
CASE NO **V-13-A-07539**  
**66**

JA 076



State of Nevada  
Department of Employment, Training and Rehabilitation  
Employment Security Division - NNAC  
500 E. Third Street, Carson City, NV 89713  
PHONE (775) 684-0302 FAX (775) 684-0338  
**NOTICE OF DETERMINATION**

Date Mailed: June 25, 2013  
Last Date to Appeal: July 8, 2013

Detect Date 06/05/13  
Type of Determination  
Original

Wk Date 06/08/13  
Dept Rep:

TO:

CALVIN MURPHY  
2606 LYNNWOOD ST #6  
LAS VEGAS NV 89109

SSN: - - -

**DECISION**

- ☒ You are **not** entitled to benefits effective 06/10/12 until you return to work in covered employment and earn at least \$210.00 in **each** of 10 weeks. (Proof of earnings must be furnished to end this disqualification period.)
- ☐ Because you are not entitled to benefits paid for the period specified above, you have been overpaid. If you wish to file an appeal to the overpayment, you must file by the appeal date shown above. You will receive a separate notice, which cannot be appealed, showing the amount of the overpayment.
- ☐ You have been overpaid Federal Additional Compensation (FAC).

**SUMMARY OF FACTS**

- You advised at filing you were discharged due to incarceration.
- Your employer responded you quit due to job abandonment when you were incarcerated.
- You later acknowledged being incarcerated for a long duration due to outstanding warrants.

Although a discharge was cited, based on the information in file, you are considered to have quit by job abandonment. Good cause for quitting available work has not been shown. Benefits are not allowed.

**LAW**

**NRS 612.380:** A person is ineligible to receive benefits for the week in which he voluntarily left his last or next-to-last employment: 1) Without good cause, and until he returns to work in subsequent covered employment and earns his weekly benefit amount in each of ten weeks; or 2) To seek other employment until he secures other employment and is subsequently unemployed through no fault of his own.

**NRS 612.365:** Any person who is overpaid any amount as benefits is liable for the amount overpaid unless: 1) The overpayment was not due to fraud, misrepresentation or willful nondisclosure on the part of the claimant AND the overpayment was received without fault of the claimant and its recovery would be against equity and good conscience, as determined by the administrator.

INTERESTED EMPLOYER:

GREYSTONE PARK APARTMENTS  
5050 S DUNEVILLE  
LAS VEGAS NV 89118

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EXHIBIT  
CASE NO. 13-A-07539



JA 077

## APPEAL RIGHTS

**NOTICE:** If you receive more than one decision, read each one carefully to protect your appeal rights. ANY ineligible decision will stop payment of this claim. Please read the following information carefully.

If the box below is checked for either the claimant and/or the employer, either party has the right to file an appeal if they believe this determination is incorrect. The appeal must be filed or postmarked by the appeal date shown on the previous page. The appeal date may be extended if you can show good cause for the delay in filing. Either party may appeal by writing a letter to the address shown at the top of the previous page. This appeal must include the reason for appealing, the social security number and the appellant's signature. If an interpreter is needed, please include this request in the appeal letter. During the appeal process, the claimant must continue to file claims for any week he/she is unemployed to preserve any benefit rights that may be established as a result of the appeal. If an appeal is filed by either party, all parties should participate in the hearing to protect your rights. If you need additional information, please contact the telephone claims office.

### NOTICE TO CLAIMANT

- ☒ If you disagree with this decision, you may file an appeal by the appeal date shown on the previous page.

### NOTICE TO EMPLOYER

- ☒ If you disagree with this decision, you may file an appeal by the appeal date shown on the previous page.
- ☒ You paid 75% or more of the base period earnings. Your experience rating record ☐ will be charged; ☒ will not be charged. Employer Account Number \_\_\_\_\_

**NRS 612.551:** Any employer who has paid 75 percent or more of a claimant's base period wages has the right to protest charging of benefits paid to his account. The protest must be made within 10 business days of the notice of determination identifying the employer as having contributed 75 percent of the base period wages. Benefits paid as a result of an alternative base period as provided under NRS 612.344, or paid to individuals who leave to take other employment may not be charged to the former employer.

- ☐ This claimant has had two separate periods of employment with you. For this period of employment, you were not the 75% employer. A ruling for the prior period of employment will be issued by the Rulings Unit.
- ☐ As a direct reimbursement employer, you will be assessed your share of benefits paid.
- ☐ You did not pay 75% or more of the base period earnings and no ruling applies. Your account may be charged its proportionate share.
- ☐ Additional claim on existing benefit year, no ruling applies.
- ☐ This is a federal extension claim and your account will not be charged for benefits paid on this claim.

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FOR SPECIFIED EXCEPTIONS  
EXPIRES 1-3-A-0753968

VQDN

CALVIN MURPHY  
2606 LYNNWOOD ST # 6  
LAS VEGAS, NV 89109  
SSN: 573-11-9371

Postmark-Date 7-1-13  
Received-Date 7-3-13  
Certified By [Signature]  
NNAC 177 Carson City, NV  
UI OPERATIONS

June 28, 2013

State of NV, DETR  
Employment Sec. Div. - NNAC  
500 E. Third Street  
Carson City, NV 89713  
RE: **APPEAL to decision Detect Date 06/05/2013**

RECEIVED  
JUL 03 2013  
NNAC 177 CARSON CITY, NV  
UI OPERATIONS

Dept Rep 8002:

I wish to appeal the decision by the DETR to disqualify me to receive Unemployment Insurance Benefits based on the following information.

I did inform DETR that I had in fact been discharged due to incarceration. I did not abandon my job. I contacted Joe (my Supervisor) via Ms. Tina Watkins (my common-law-wife) who had been introduced to him in that capacity prior to my incarceration.

Ms. Watkins says that she advised Joe on Saturday, (the day after my arrest) that I had been arrested; that I could only make collect calls; that all contact would have transpire through her and that he acknowledged and agreed to that.

Ms Watkins also said that after she apprised my Joe of my circumstances; that he told her he would hold my position for me. Ms. Watkins has told me that after she notified Joe that I may be incarcerated for a year, he told her he would not hold the position that long. She says, he also stated, as he handed her, my paycheck (two weeks after I had been arrested), that it was my last, and he was not holding my position even if I got out earlier.

Respectfully,

*Calvin Murphy*

Calvin Murphy

As a former CA State Prisons Corrections Officer, and Mr. Murphy's significant other; I attest that the statements regarding my conversations and actions referenced above as being truthful, forthright and represented exactly as they occurred.

*Tina J. Watkins*  
Tina J. Watkins

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COMPENSATION LITIGATION EXCEPT  
FOR SPECIFIED EXCEPTIONS  
EXHIBIT  
CASE NO. 13-A-07539

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JUL 14 2013  
LAS VEGAS  
APPEALS

JA 079

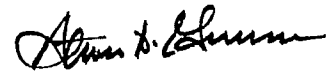
**NEW YORK OFFICE**

COMPENSATION LITIGATION EXCEPT  
FOR SPECIFIED EXCEPTIONS  
EXHIBIT 13-A-07539  
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**ORIGINAL**

**PTOB**  
**RON SUNG, ESQ.**  
Nevada State Bar No. 13047C  
**J. 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  
*Attorneys for Calvin Murphy*



CLERK OF THE COURT

**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,**

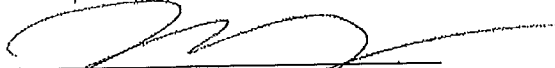
Respondents.

**PETITIONER'S OPENING BRIEF IN SUPPORT OF  
PETITION FOR JUDICIAL REVIEW**

Petitioner, **CALVIN MURPHY**, by and through her attorney, Ron Sung, Esq.,  
and Nevada Legal Services, Inc., petitions this Court, submits the following Opening  
Brief in Support of Petition for Judicial Review.

DATED this 23 day of December, 2013.

Respectfully submitted,



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  
*Attorneys for Calvin Murphy*

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### **JURISDICTIONAL STATEMENT**

NRS 612.530(1) vested this Court with jurisdiction over the instant petition.

Petitioner filed the petition within 11 days of the final decision of the Board of Review for the Nevada Employment Security Division (hereinafter "ESD").

### **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Did equating incarceration with misconduct constitute an error of law and violate the *Evans/Bundley* standard?
2. Did substantial evidence support ESD's misconduct determination using the correct *Evans/Bundley* standard?

### **STATEMENT OF THE CASE**

#### **A. Nature of the Case**

Pursuant to NRS 612.530(1), Petitioner, Calvin Murphy (hereinafter "Murphy") filed a petition for judicial review with this Court after Nevada Employment Security Division (hereinafter "ESD") denied petitioner's claim for unemployment insurance benefits.

#### **B. Course of Proceedings**

Murphy worked for Greystone Park Apartments (hereinafter "Greystone") from July 13, 2011, until June 10, 2012. (Record, p. 17). Greystone terminated Murphy for being a no call no show on June 4, 2012. (Record, p. 17).

On June 25, 2013, a claims adjudicator for ESD denied Murphy's unemployment insurance benefits. (Record, p. 17). Murphy filed a timely appeal and ESD conducted a hearing on July 30, 2013. (Record, p. 21).

On July 31, 2013, the Appeals Referee determined Murphy committed misconduct pursuant to NRS 612.385 and denied his claim for benefits. (Record, p. 17).

Murphy filed a timely appeal with ESD's Board of Review and the Board of Review conducted a hearing on September 11, 2013. (Record, p. 14). On September 19, 2013, the Board of Review affirmed the Appeal Referee's decision. (Record, p. 13). On October 7, 2013, Murphy filed his timely Petition for Judicial Review in district court. (Record, p. 2).

#### **STATEMENT OF FACTS**

On July 13, 2011, Greystone hired Murphy to work as a Maintenance Employee. (Record, p. 17 and 35). His last day of work was June 1, 2012. (Record, p. 13). Murphy worked Mondays through Fridays. (Record, p. 42). On June 10, 2013, Greystone terminated Murphy for no call no show on Monday June 4, 2012. (Record, p. 13).

On Friday June 1, 2012, Las Vegas Metro Police arrested Murphy due to a warrant for charging stemming from possession of stolen property that occurred before his employment with Greystone. (Record, p. 18 and 43). Murphy's next scheduled work day was Monday, June 4, 2012. (Record, p. 18). On Saturday June 2, 2012, Murphy's girlfriend, Tina Watkins (hereinafter "Watkins"), informed Inez Cabrerra (hereinafter "Cabrerra"), property manager for Greystone, about Murphy's incarceration. (Record, p. 18 and 51). Watkins asked Cabrerra whether Greystone would hold Murphy's job. (Record, p. 51). Cabrerra stated that Greystone would only hold Murphy's job for maybe

one or two days, not for the long-term. (Record, p. 51). Watkins could not inform Cabrerra when Murphy would be released because Murphy could not pay the \$40,000 amount for bail. (Record, p. 47). Watkins promised to keep Cabrerra informed about Murphy's Incarceration. (Record, p. 51).

Murphy pled guilty to possession of stolen property on or about July 10, 2012. (Record, p. 47). On or about July 10, 2012, Watkins informed Cabrerra that Murphy would remain incarcerated. (Record, p. 52). Watkins also asked Cabrerra to pick up Murphy's check, which she approved. (Record, p. 18). Watkins picked up the check from Joe Donahue, Murphy's supervisor. (Record, p. 52).

Murphy was incarcerated for about a year from June 1, 2012, to June 3, 2013. (Record, p. 18). Murphy lacked the funds to post the \$40,000 bail for release before trial. (Record, p. 47). While incarcerated, Murphy had limited access to the phone in jail, as inmates can only call collect. At the same time, Greystone refused to accept collect calls. Murphy informed Greystone about his incarceration via his girlfriend, Tina Watkins, before his next scheduled work day, June 4, 2013. (Record, p. 18).

Murphy filed for unemployment benefits on June 2, 2013. (Record, p. 17). On July 31, 2013, ESD's Appeals Referee decided that Murphy was ineligible for unemployment insurance benefits on the basis of misconduct. (Record, p. 17-20).

#### **SUMMARY OF ARGUMENT**

The Appeals Referee used the wrong legal standard in denying Murphy's unemployment benefits. The Supreme Court of Nevada, in the *Evans* and *Bundley* cases, has previously rejected the *per se* standard used by the Referee. Therefore, the Referee's decision was wrong as a matter of law.

Furthermore, the Referee's determination was not supported by substantial evidence because, under *Evans/Bundley*, Murphy's actions did not constitute misconduct sufficient to deny unemployment benefits.

### **ARGUMENT**

#### **A. Standard of Review**

NRS 612.530(4) confined the court to questions of law, and ESD's factual findings were conclusive if supported by evidence and without fraud. NRS 612.385 allowed ESD to deny unemployment benefits if Murphy was discharged from either his last or next to last employment "for misconduct connected with the person's work. . . ."

*Id.* "Misconduct" has been defined repeatedly as the following:

a deliberate violation or disregard on the part of the employee of standards of behavior which the employer has the right to expect. Carelessness or negligence on the part of the employee of such a degree as to show a substantial disregard of the employer's interests or [of] the employee's duties and obligations to his employer. . . . Mere inefficiency or failure of performance because of inability or incapacity, ordinary negligence in isolated instances, or good faith errors in judgment or discretion are excluded in the definition of misconduct.

*Barnum v. Williams*, 84 Nev. 37, 41, 436 P.2d 219, 222 (1968).

Misconduct also required "an element of wrongfulness." *Kolnik v. State, Emp. Sec. Dep't*, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996) (*citing Garman v. State, Emp. Sec. Dep't*, 102 Nev. 563, 565, 729 P.2d 1335, 1336 (1986)). A misconduct determination was a "fact-based question of law . . . entitled to deference." *Clark County*

*Sch. Dist. v. Bundley*, 122 Nev. 1440, 1445, 148 P.3d 750, 754 (2006). If supported by substantial evidence, ESD's misconduct determination should not be disturbed. *Kolnik v. State, Emp. Sec. Dep't*, 112 Nev. 11, 16, 908 P.2d 726, 729 (1996). "Substantial evidence" was that which a reasonable mind could find adequate to support a conclusion. *Id.* Substantial evidence was "more than a mere scintilla but less than a preponderance." *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 n.1 (9th Cir. 2005) (internal quotes and citation omitted).

This Court must reverse an ESD decision that lacked substantial evidence. *State, Emp. Sec. Dep't v. Weber*, 100 Nev. 121, 124-25, 676 P.2d 1318, 1320 (1984); *Lellis v. Archie*, 89 Nev. 550, 554, 516 P.2d 469, 471 (1973). This Court may also set aside an agency's final decision if was, "among other things, affected by error of law. . . ." *Father & Sons v. Transp. Servs. Auth.*, 124 Nev. 254, 259, 182 P.3d 100, 104 (2008). This Court reviewed errors of law *de novo*. *Bundley*, 122 Nev. at 1445, 148 P.3d at 754.

**B. The Appeals Referee Erred As A Matter of Law**

ESD's Board of Review affirmed the findings of fact and the reasons of the Appeals Referee. (Record, p.13). Thus, the Appeals Referee's decision formed the basis for ESD's denial of unemployment benefits. This Court must reverse Referee's denial if it was affected by an error of law.

The Appeals Referee's decision indicated a lack of understanding that constituted an error of law. Automatically disqualifying Murphy because of his incarceration violated Nevada law. According to the Referee:

Here, claimant [Murphy] admitted during the evidentiary hearing that he was guilty of the criminal conduct of being arrested based on a bench

warrant issued due to charges brought against him in May 2012 for being in possession of stolen property, which resulted in him being charged for the conduct and his incarceration for one year. The claimant's admitted off-duty criminal conduct is connected with the work because said conduct resulted in the claimant's inability to report for work, dutifully notify the employer, and perform his job duties. Therefore, claimant's off-duty criminal conduct, which adversely affected his ability to fulfill his dutiful obligations to the employer, demonstrated a deliberate violation or disregard of reasonable standards of conduct so as to contain an element of wrongfulness. Disqualifying misconduct connected with the work has been established.

(Record, p. 19).

The Referee's decision was wrong as a matter of law because criminal conduct that caused incarceration was not *per se* misconduct based on the "inability to report to work, dutifully notify the employer, and perform his job duties." (Record, p. 19). The Referee jumped from incarceration to misconduct without any analysis. The Supreme Court of Nevada rejected a *per se* standard for incarceration in *State, Emp. Sec. Dep't v. Evans, Infra*. Because the Referee used the wrong legal standard, the Referee's decision was wrong as a matter of law and should be reversed.

In *Evans*, the employer terminated Evans because she was arrested for animal cruelty, incarcerated pending trial and could not afford bail. *State, Emp. Sec. Dep't v. Evans*, 111 Nev. 1118, 1119-20, 901 P.2d 156, 156-57 (1995). It was impossible for

Evans to appear for work and she notified her employer of this fact. *Id.*, 111 Nev. at 1119, 901 P.2d at 157.

In reversing ESD, the Court held "neither Evans' pre-trial incarceration nor her criminal acts were connected with her employment" and "her absence from work was neither deliberate nor voluntary." *Id.*, 111 Nev. at 1119, 901 P.2d at 157. In *Evans*, if it was "impossible . . . to appear for work," and the employee "dutifully notified" the employer, then there was no misconduct under NRS 612.385 because the employee's actions were "neither deliberate nor voluntary." *Id.*

*Evans* dealt with (1) incarceration and (2) inability to show up for work. This Court later refined the *Evans* standard with regard to showing up for work:

[A]n employee's absence will constitute misconduct for unemployment compensation purposes only if the circumstances indicate that the absence was taken in willful violation or disregard of a reasonable employment policy (*i.e.*, was unjustified and, if appropriate, unapproved), or lacked the appropriate accompanying notice.

*Clark County School Dist. v. Bundley*, 122 Nev. 1440, 1146, 148 P.3d 750, 755 (2006).

Bundley worked as a teacher with the Clark County School District. *Bundley*, 122 Nev. at 1143, 148 P.3d at 753. Clark County School District discharged her based on excessive absences. Bundley argued that she properly called in and that each absence had a valid excuse, such as taking care of an ill daughter. *Id.*, 122 Nev. at 1143-44, 148 P.3d at 753. The Nevada Supreme Court held that "mere absence without leave is not disqualifying misconduct." *Id.*, 122 Nev. at 1148, 148 P.3d at 756. The analysis required



a consideration of whether the conduct was "in willful violation or disregard of the school's standards." *Id.*, 122 Nev. at 1149, 148 P.3d at 756.

Taken together, *Evans and Bundley* demonstrated that incarceration was not *per se* misconduct based on the inability to go to work. The legal analysis involved whether the employee (1) "dutifully notified" the employer (*Evans*), and (2) whether the employee's absence was unjustified or "taken in willful violation or disregard of a reasonable employment policy" (*Bundley*). If ESD's decision violated *Evans/Bundley*, the decision was wrong as a matter of law.

In the instant case, the Appeals Referee never used the *Evans/Bundley* analysis. The Appeals Referee failed to credit Murphy for dutifully notifying his employer via Watkins that he could not report to work on June 4, 2012 (Record, p. 18 and 51). Moreover, the Appeals Referee failed to consider whether Murphy's absence was reasonable, instead inaccurately concluding that incarceration resulting in the inability to "fulfill his dutiful obligations to his employer" equated to misconduct. (Record, p. 19). Thus, ESD's decision lacked the legal analysis that *Evans/Bundley* required and was wrong as a matter of law.

The Referee's decision in the instant case was similar to the dissent in *Evans*. The dissent argued that employees who engaged in criminal activity resulting in incarceration and absence from work were "willfully disregarding their duty and obligation to be on the job and doing their work in accordance with the terms and expectations of their employment." *Evans*, 111 Nev. at 1121, 901 P.2d at 157-58. Under this standard, any incarceration due to criminal conduct would lead to a determination of misconduct. See, *id.* (where dissent would treat any incarceration the

same as willful conduct, such as taking vacation time without authorization or waiting by your disabled car for help instead of contacting your employer or seeking alternative transportation).<sup>1</sup>

The majority in *Evans* rejected this view, holding that incarceration was not *per se* misconduct. As shown above, the Court required an analysis of whether it was impossible to appear at work and timely notice to the employer. *Evans*, 111 Nev. at 157, 901 P.2d at 1119. That the Referee used the dissent's analysis indicated that the Referee was wrong as a matter of law.

Moreover, Murphy's commission of a crime cannot in itself be the basis to deny unemployment benefits because the Legislature has already determined which crimes result in *per se* misconduct. NRS 612.383 contained this list and included any work-connected assault, arson, sabotage, grand larceny, embezzlement or wanton destruction of property. No other crimes warranted a *per se* denial of unemployment benefits under NRS 612.383, and ESD cannot create any exception where Nevada Legislature could have easily added to this list of crimes. *Southern Nev. Homebuilders v. Clark County*, 112 Nev. 446, 449, 117 P.3d 171, 173 (2005) (citing *McKay v. Board of County Comm'rs of Douglas County*, 103 Nev. 490, 492, 746 P.2d 124 (1987)); see also *Evans*, 111 Nev. at 1119, 901 P.2d at 156 (where crimes under NRS 612.383, misconduct and leaving work without good cause were the only three bases to deny unemployment benefits).

**C. The Appeals Referee's Decision Lacks Substantial Evidence**

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<sup>1</sup> These facts mirror the cases of *State, Emp. Sec. Dep't v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984) and *Kraft v. Nev. Emp. Sec. Dep't*, 102 Nev. 191, 717 P.2d 583 (1986), respectively.

As shown above, the Appeals Referee never applied the *Evans/Bundley* standard because the Referee concluded without analysis that incarceration due to off-duty crime equaled misconduct. (Record, p. 17-20). Assuming, *arguendo*, the Referee had used the correct standard, the decision still would be subject to reversal because it lacked substantial evidence.

In the instant case, Murphy could not appear at work due to incarceration, and his girlfriend, Watkins, notified his employer two days before his next scheduled work day. (Record, p. 18 and 51). Moreover, Murphy's arrest and incarceration involved only events that occurred before his employment with Greystone. (Record, p. 43). The arrest did not have any connection with Murphy's job as a Maintenance Employee and did not evince a willful violation or disregard of an employment policy.

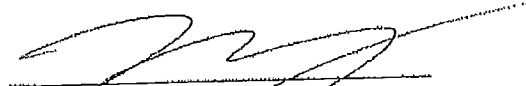
As stated earlier, this Court refined the failure to show up at work standard by requiring either the "willful violation or disregard of a reasonable employment policy . . . [or the lack of] the appropriate accompanying notice." *Bundley*, 122 Nev. at 1146, 148 P.3d at 755. Because ESD's Referee failed to use this standard and failed to provide any evidence regarding the *Evans/Bundley* requirements, ESD's determination lacked substantial evidence. Accordingly, this Court must reverse ESD's determination.

#### CONCLUSION

ESD's determination was wrong as a matter of law because its Appeals Referee used the wrong legal standard of equating incarceration with misconduct. Under the correct legal standard, substantial evidence does not support ESD's determination that Murphy committed misconduct. Therefore, this Court should reverse ESD's decision.

DATED this 23 day of December, 2013.

Respectfully Submitted,  
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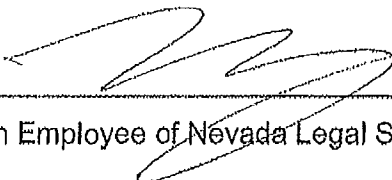
**CERTIFICATE OF MAILING**

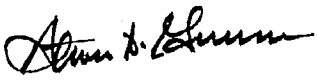
I hereby certify that on the 23 day of December, 2013, I mailed a true and correct copy of the above and foregoing APPELLANT'S OPENING BRIEF to the Respondent first-class postage fully prepaid thereon, by placing the same in the United States Mail at Las Vegas, Nevada, addressed as follows:

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DATED this 23 day of December, 2013.

  
\_\_\_\_\_  
An Employee of Nevada Legal Services



CLERK OF THE COURT

1 ANSB

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2 Nevada State Bar No. 898

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7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9  
10 CALVIN STEVEN MURPHY,

11 Petitioner,

12 vs.

13 EMPLOYMENT SECURITY  
DIVISION, STATE OF NEVADA, etc.;  
14 and GREYSTONE PARK  
APARTMENTS, as employer,

15 Respondents.

CASE NO.: A689756

DEPT. NO.: I

16  
17 ESD'S ANSWERING BRIEF

18 COMES NOW, Respondent, Administrator, State of Nevada,

19 Department of Employment, Training and Rehabilitation, Employment Security

20 Division (ESD), by and through counsel, J. Thomas Susich, Esq., and hereby

21 submits ESD's Answering Brief, as follows:

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STATEMENT OF THE CASE

Calvin S. Murphy (claimant) was employed as a maintenance employee from July 13, 2011, to June 10, 2012, by Greystone Park Apartments (employer). (Record, 17) Claimant was terminated by the employer for misconduct. (R, 17)

Claimant filed a claim for unemployment insurance benefits. The claim was reviewed by the Administrator through an investigator known as an adjudicator. The adjudicator issued a determination on June 25, 2013, finding that the claimant was not entitled to receive unemployment insurance benefits because the claimant quit his employment without good cause under NRS 612.380. (R, 80) Claimant appealed and an evidentiary hearing was held before the Administrative Tribunal (referee) on July 30, 2013. (R, 21-56) The referee issued a decision on July 31, 2013, finding that the claimant was discharged as opposed to quitting, but affirming the Administrator determination denying benefits. The referee found that the claimant was discharged for misconduct connected with work in violation of NRS 612.385. (R, 17-19).

Claimant then filed an appeal to the Board of Review. The Board issued a decision on September 19, 2013, adopting the findings of fact and conclusions of law of the referee and affirming the denial of benefits under NRS 612.385. (R, 13) In its order, the Board notified the claimant that any appeal to the District Court had to be filed by October 11, 2013. (R, 13)

1 Claimant filed the Petition for Judicial Review with the District Court  
2 on October 7, 2013. (R, 2)

3 STATEMENT OF THE FACTS

4 The Board of Review is the final fact-finder under NRS 612.530. The  
5 Board adopted the factual findings of the referee. The referee and Board found as  
6 follows:

- 7 1. Claimant was employed from July 13, 2011 to June 10, 2012 as  
8 a maintenance employee by the employer. (R, 17)
- 9 2. Claimant was discharged as a no call/no show on June 4, 2012.  
10 (R, 17)
- 11 3. On June 1, 2012, the claimant was arrested due to a warrant  
12 issued for his arrest for charges stemming from possession of stolen property. (R,  
13 18)
- 14 4. On June 2, 2012, claimant's girlfriend (Tina) informed the  
15 employer's manager (Inez) that the claimant had been incarcerated. (R, 18)
- 16 5. On June 4, 2012, the claimant was scheduled to report for work  
17 but did not show up for work and did not contact the employer to notify the  
18 employer that he would not be reporting for work that day. (R, 18)
- 19 6. The claimant was unable to call his employer from jail on June  
20 4, 2012. (R, 18)

21 ///

1           7.     Claimant entered a plea of guilty to reduced charges on June 10,  
2 2012, and was sentenced to one year in jail. (R, 18)

3           8.     Claimant's girlfriend spoke with the employer after June 10,  
4 2012, and informed the employer that the claimant was in jail and that she wanted  
5 to pick up his check. The girlfriend did pick up the claimant's check and was told  
6 by the employer that the employer could not hold the claimant's job open. (R, 18)

7           9.     Claimant was in jail for a year. Claimant was released from jail  
8 on June 3, 2013. (R, 18)

9           10.    Claimant was aware of the employer's no call/no show policy  
10 and understood he was subject to termination. (R, 18)

11           11.    The claimant admitted during the evidentiary hearing that he  
12 was guilty of the criminal conduct which resulted in his arrest. Claimant admitted  
13 that off-duty criminal conduct is connected with work because said conduct  
14 resulted in the claimant's failure to report for work and to dutifully notify his  
15 employer that he would be absent. (R, 19)

16           12.    Claimant's admitted off-duty criminal conduct adversely  
17 affected his ability to fulfill his duties and obligations to his employer by  
18 restricting his ability to perform his duties. His conduct of committing a crime  
19 while off-duty was a deliberate violation or disregard of reasonable standards of  
20 conduct which the employer had the right to expect. (R, 19)

21     ///

13. Claimant's admitted off-duty criminal conduct which resulted in his failure to report for work and notify his employer of his absence was wrongful.

14. The claimant is guilty of misconduct under NRS 612.385 and is denied unemployment insurance benefits. (R, 19)

### STANDARD OF REVIEW

If supported by evidence and in the absence of fraud, the decision of the Board is conclusive. NRS 612.530(4); *State Employment Sec. Dept. v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984). In reviewing the Board's decision, this Court is limited to determining whether the Board acted arbitrarily or capriciously. *State Emp. Sec. Dept. v. Taylor*, 100 Nev. 318, 683 P.2d 1 (1984); *McCracken v. Fancy*, 98 Nev. 30, 31, 639 P.2d 552 (1982); *Bryant v. Private Investigator's Lic. Bd.*, 92 Nev. 278, 549 P.2d 327 (1976); *Lellis v. Archie*, 89 Nev. 550, 516 P.2d 469 (1973).

In performing its review function, this Court may not substitute its judgment for that of the Board of Review, *Weber, supra*; *McCracken, supra*, nor may this Court pass upon the credibility of witnesses or weigh the evidence, but must limit review to a determination that the Board's decision is based upon substantial evidence. NRS 233B.135(3).

Substantial evidence has been defined as that which "a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389 (1971). Stated another way, it has been held that "substantial evidence" means only competent evidence which, if believed, would have a

1 probative force on the issues. *State ex rel. Util. Consumers Council v. P.S.C.*, 562  
2 S.W.2d 688 (Mo. App. 1978). Evidence sufficient to support an administrative  
3 decision is not equated with a preponderance of the evidence, as there may be  
4 cases wherein two conflicting views may each be supported by substantial  
5 evidence. *Robinson Transp. Co. v. P.S.C.*, 159 N.W.2d 636 (Wis. 1968).

6 The burden to be met by Respondent is to show that the Board's  
7 decision is one which could have been reached under the facts of this case. This  
8 Court is confined to a review of the record presented below, *Lellis, supra*, at 553-  
9 554, and the Board's action is not an abuse of discretion if it is supported by  
10 substantial evidence in the record. *State, Dept. of Commerce v. Soeller*, 98 Nev.  
11 579 at 586, 656 P.2d 224 (1982); *Lellis, supra*; *North Las Vegas v. Pub. Serv.*  
12 *Comm'n*, 83 Nev. 278, 426 P.2d 66 (1967); *Randono v. Nev. Real Estate Comm'n*,  
13 79 Nev. 132, 379 P.2d 537 (1963).

14 In the case of *Clark County School District v. Bundley*, 122 Nev.  
15 1440, 148 P.3d 750 (2006), our Nevada Supreme Court stated as follows:

16 When reviewing an administrative unemployment  
17 compensation decision, this court, like the district court,  
18 examines the evidence in the administrative record to  
19 ascertain whether the Board acted arbitrarily or  
20 capriciously, thereby abusing its discretion. With regard  
21 to the Board's factual determinations, we note that the  
Board conducts de novo review of appeals referee  
decisions. Therefore, when considering the  
administrative record, the Board acts as 'an independent  
trier of fact,' and the Board's factual findings, when  
supported by substantial evidence, are conclusive.

1 Accordingly, we generally review the Board's decision to  
2 determine whether it is supported by substantial  
3 evidence, which is evidence that a reasonable mind could  
4 find adequately upholds a conclusion. In no case may we  
5 substitute our judgment for that of the Board as to the  
6 weight of the evidence. Thus, even though we review de  
7 novo any questions purely of law, the Board's fact-based  
8 legal conclusions with regard to whether a person is  
9 entitled to unemployment compensation are entitled to  
10 deference.

11 Therefore, while a party who is appealing an adverse determination  
12 may have the burden of producing sufficient evidence to convince the  
13 administrative tribunal that his case has been proved by a preponderance of the  
14 evidence, the reviewing court may only determine whether there was substantial  
15 evidence in the record from which a reasonable fact-finder could have concluded  
16 whether the case was proved by a preponderance of the evidence. In other words,  
17 the burden to be met by Respondent, at this level, is to show that the Board's  
18 decision is one which could have been reached under the evidence in the record;  
19 not that it is the "only" decision or even the "best" decision which may be  
20 suggested by the evidence contained within the record.

#### 21 ARGUMENT

22 The claimant argues in his Brief that the referee erred as a matter of  
23 law because the referee allegedly did not conduct an analysis of the claimant's  
24 conduct, but instead "automatically" disqualified him from receiving benefits  
25 because he committed a crime.

1           An examination of the referee's decision shows that the claimant's  
2 argument has no merit. The referee specifically compared the facts in the instant  
3 case with the facts in *State, Emp. Sec. Dep't. v. Evans*, 111 Nev. 1118, 901 P.2d  
4 156 (1995). In *Evans*, the claimant had been arrested and was being held in jail  
5 pending trial. During that time, she dutifully kept in contact with her employer and  
6 applied for and received leaves of absence. The claimant in *Evans* was not in jail  
7 because she had committed a crime, but was in jail because she was awaiting trial  
8 and could not afford bail. The Nevada Supreme Court in *Evans* pointed out that  
9 Evans' inability to report for work was due to her poverty, not her criminal  
10 conduct. The Supreme Court held that Evans' missing work because she could not  
11 afford to post bail was not sufficient grounds to deny benefits. *Id.*, at 1119. The  
12 Supreme Court stated: "Evans' failure to be available for work was due to her  
13 pretrial incarceration which was predicated on her inability to obtain bail, not her  
14 criminal conduct." *Id.*, at 1119.

15           The referee was mindful of the specific wording of the majority  
16 opinion in *Evans*. The referee then asked questions with the intent of determining  
17 if the claimant in this case was in jail due to an inability to post bail, or whether he  
18 was in jail because he had engaged in off-duty criminal conduct.

19           Claimant testified that he was arrested on June 1, 2012, and was  
20 released on June 3, 2013. (R, 43) The claimant was asked why he was in jail. His  
21 response was that he was in jail because he possessed stolen property. (R, 43) The



1 claimant was arrested on a warrant due to possessing stolen property. (R, 46) The  
2 claimant admitted during his testimony that he committed the crime and was  
3 incarcerated for committing the crime. (R, 46)

4 The claimant testified that his girlfriend communicated with the  
5 employer sometime after the claimant's incarceration and informed the employer  
6 that the claimant would not be returning to work. (R, 50) The claimant took no  
7 action to request a leave of absence himself or to have anyone request a leave of  
8 absence on his behalf. (R, 50)

9 Tina Watkins, the claimant's girlfriend, testified that she notified the  
10 employer on June 2, 2012, that the claimant had been arrested. Tina talked to Inez  
11 at the employer's office. Inez told Tina that the employer would attempt to hold  
12 the claimant's job open for a few days, but that Tina needed to keep the employer  
13 informed of the claimant's status. (R, 51) The next contact Tina had with the  
14 employer was two weeks later on approximately June 14, 2012. Tina went to the  
15 employer's office to pick up the claimant's check. (R, 52) Tina testified that she  
16 went over to talk to the employer after the 10<sup>th</sup> of June because the claimant knew  
17 that he was not getting out of jail. (R, 52)

18 Substantial evidence exists in the Record that the claimant did commit  
19 the crime and was incarcerated for committing the crime. He knew when he  
20 committed the crime that he could be incarcerated and knew that it could be for a  
21 long time.

1           The facts in *Evans, supra*, and the facts in the instant case could not  
2 be more different. The claimant was not incarcerated because he was awaiting a  
3 trial. He admittedly was incarcerated because he knowingly possessed stolen  
4 property. He was sentenced to a year in jail and was not released until June 3,  
5 2013, a year later. Claimant made no effort to communicate with his employer  
6 other than to have his girlfriend notify the employer that he was in jail and to go  
7 pick up his check. By his own testimony, he did not request a leave of absence nor  
8 did he have anyone request one on his behalf.

9           In *Evans, supra*, the Nevada Supreme Court stated that there are three  
10 statutory reasons for denying unemployment insurance benefits to a claimant: 1.  
11 The claimant quit his employment without good cause; 2. The claimant  
12 committed crimes against the employer; 3. The claimant was discharged for  
13 misconduct connected with work.

14           The referee found that the claimant did not quit his employment.  
15 There is no evidence that the crime committed by the claimant was against the  
16 employer. Thus, the only remaining basis for denying benefits would be  
17 misconduct connected with work under NRS 612.385.

18           Misconduct has been defined by the Nevada Supreme Court as  
19 follows:

20           The term misconduct is used in an industrial sense, not a  
21 criminal sense. Nevada's highest administrative appeal  
body, the Board of Review, has defined misconduct as a

1 deliberate violation or disregard on the part of the  
2 employee of standards of behavior which his employer  
3 has the right to expect. Carelessness or negligence on the  
4 part of the employee of such a degree as to show a  
5 substantial disregard of the employer's interests or the  
6 employee's duties and obligations to his employer are  
7 also considered misconduct connected with the work.  
8 Mere inefficiency or failure of performance because of  
9 inability or incapacity, ordinary negligence in isolated  
10 instances, or good faith errors in judgment or discretion  
11 are excluded in the definition of misconduct. *Barnum v.*  
12 *Williams*, 84 Nev. 37, at 41; 436 P.2d 219 (1968).

13 Given the facts of the case, the referee analyzed the obvious issues.

14 1. Was the claimant in the instant case terminated because of his  
15 criminal conduct or was he terminated because he violated his employer's policy  
16 that required him to report for work?

17 The referee held that the claimant was terminated because he violated  
18 the employer's reasonable absence policy by failing to report for work and by  
19 failing to dutifully keep the employer informed of his status. (R, 19; 34)

20 2. Why did the claimant fail to report for work?

21 The referee held that the claimant did not report for work because he  
had engaged in off-duty criminal conduct which resulted in his being incarcerated.  
Unlike Evans, the claimant was not incarcerated due to his poverty. (R, 19)

3. Did the claimant dutifully keep his employer notified of his  
situation?

///

1           No. The claimant did not keep the employer notified. His girlfriend  
2 was contacted by the employer and informed the employer that the claimant was in  
3 jail. (R, 35) The claimant's girlfriend picked up the claimant's check after June 10,  
4 2012, and told the employer that she didn't know when the claimant might be  
5 released, but that he would not be returning to work. (R, 18, 19)

6           4. Was the claimant able to keep in contact with his employer; and  
7 if not, was it the claimant's fault that he was unable to communicate with his  
8 employer?

9           The claimant was unable to directly communicate with his employer  
10 because the claimant committed an off-duty crime and was incarcerated for it. The  
11 claimant's inability to communicate directly with his employer was the claimant's  
12 fault because the claimant intentionally committed the crime that resulted in his  
13 incarceration. (R, 19)

14           5. Did the claimant ask for a leave of absence in order to protect  
15 his employment either directly or through an emissary?

16           No. The claimant admittedly made no effort to request a leave of  
17 absence. (R, 50)

18           6. Was the claimant's act of committing an off-duty crime a  
19 deliberate violation or disregard on the part of the claimant of standards of  
20 behavior which his employer has the right to expect?

21 ///

1           Yes. The claimant engaged in off-duty criminal conduct which  
2 adversely affected his ability to fulfill his dutiful obligations to the employer. His  
3 conduct demonstrated a deliberate violation or disregard of reasonable standards of  
4 conduct which his employer had the right to expect. (R, 19)

5           7. Was the claimant's conduct wrongful?

6           Yes. The claimant's conduct of failing to report for work was conduct  
7 that fell below the employer's reasonable expectations. (R, 19) In the case of  
8 *Fremont Hotel v. Esposito*, 104 Nev. 394, 760 P.2d 122 (1988), the Nevada  
9 Supreme Court discussed the issue of "wrongfulness." The court held that  
10 wrongfulness exists if the trier-of-fact, *i.e.*, the Board of Review, applies the facts  
11 to the law and reasonably concludes that the claimant acted contrary to the manner  
12 which the employer had the right to expect. (104 Nev. 397-398)

13           The claimant's argument that the referee and Board improperly  
14 applied a *per se* standard to off-duty criminal conduct is unsupported by the  
15 Record. The referee and Board did not hold that off-duty criminal conduct is  
16 misconduct *per se* under NRS 612.385. In order for off-duty conduct to amount to  
17 misconduct, the evidence must show that said conduct has a reasonable nexus to  
18 the work. *Clevenger v. Nevada Employment Security Department*, 105 Nev. 145,  
19 770 P.2d 866 (1989).

20 ///

21 ///

1           The referee and Board of Review found that a reasonable nexus with  
2 work is supported by the evidence in this case. Conduct resulting in the failure of  
3 an employee to report for work or notify his employer of his status by its very  
4 nature occurs off-duty. In *Kraft v. Nevada Employment Security Department*, 102  
5 Nev. 191, 717 P.2d 583 (1986), the employee's car broke down. In *Nevada*  
6 *Employment Security Department v. Nacheff*, 104 Nev. 347, 757 P.2d 787 (1988),  
7 the employee failed to maintain daily contact with his employer due to illness.

8           In this case, the claimant's attorneys seem to be arguing that criminal  
9 conduct should be given some special exemption. They argue that unlike Kraft  
10 and Nacheff, both of whom were denied benefits due to NRS 612.385 misconduct,  
11 the claimant in this case should be granted benefits because committing a crime  
12 somehow is less serious than having your car break down or being ill. The fact is  
13 that the claimant's "inability" to communicate with his employer and his "inability"  
14 to report for work were a direct result of the claimant's intentional and deliberate  
15 violation of the law for which he was properly incarcerated.

16           Kraft did not intend for his car break down; and Nacheff did not  
17 intend to become ill. But in this case, the claimant intentionally committed a crime  
18 and knew that if he was apprehended as a result of his deliberate and wrongful  
19 conduct that he would not report for work and would not dutifully notify his  
20 employer of his status. Yet, according to the claimant, the courts are required to  
21 carve out a special exemption for criminals and grant them unemployment

1 benefits. At the same time, the employer, who is totally innocent, is supposed to  
2 have its ESD Experience Rating charged and pay higher taxes because of the  
3 claimant's criminal behavior.

4 Finally, the claimant argues that off-duty criminal conduct can never  
5 result in the denial of unemployment insurance benefits. The claimant maintains  
6 that criminal conduct can only result in a denial of benefits if the crime is  
7 specifically delineated in NRS 612.383. That statute states, "...notwithstanding  
8 other provisions of this chapter ..." meaning that the provisions of NRS 612.385  
9 still apply. Claimant's argument is obviously meritless when one looks at the  
10 Supreme Court's decision in *Evans, supra*. In *Evans*, the majority went to great  
11 lengths to explain why Evans should not be denied benefits. By stating that Evans  
12 was denied benefits as a result of her poverty, not her criminal conduct, the court  
13 implicitly held that off-duty criminal conduct can form the basis of a denial of  
14 benefits under NRS 612.385.

### 15 CONCLUSION

16 The decision of the Referee and Board of Review is supported by  
17 substantial evidence in the Administrative Record and is consistent with the  
18 Supreme Court's decisions in *Evans, supra*, and *Bundley, supra*. The Nevada  
19 Supreme Court has held that the Board of Review's fact-based conclusions of law  
20 must be given deference by a reviewing court. *Bundley, supra*; *Fremont Hotel v.*  
21 *Esposito, supra*. In fact, the Nevada Supreme Court has held that a reviewing

1 court must treat the fact-based conclusions of law of the Board of Review as  
2 conclusive if there is evidence in the record to support the conclusions of law.

3 In *Garman v. State, Employment Security Department*, 102 Nev. 563,  
4 729 P.2d 1335 (1986), the Nevada Supreme Court stated:

5 Findings of misconduct must be given deference similar  
6 to findings of fact, when supported by substantial  
evidence [in the administrative record]. 102 Nev. 563,  
565.

7  
8 The decision of the Board of Review must be affirmed and the  
9 Petition for Judicial Review denied.

10 DATED this 15<sup>th</sup> day of January, 2014.

11  
12   
J. THOMAS SUSICH, ESQ.  
Attorney for Respondent ESD



ATTORNEY'S CERTIFICATE OF COMPLIANCE

1  
2           1. I hereby certify that this Answering Brief complies with the  
3 formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Answering  
5 Brief has been prepared in a proportionally spaced typeface using Microsoft Word  
6 2010 in 14 point Times New Roman.

7           2. I further certify that this Answering Brief complies with the  
8 page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of  
9 the Answering Brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages.

10           3. Finally, I hereby certify that I have read this appellate brief, and  
11 to the best of my knowledge, information, and belief, it is not frivolous or  
12 interposed for any improper purpose. I further certify that this Answering Brief  
13 complies with all applicable Nevada Rules of Appellate Procedure, in particular  
14 NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the  
15 record to be supported by a reference to the page and volume number, if any, of the  
16 transcript or appendix where the matter relied on is to be found.

17 ///

18 ///


19 ///

20 ///

21 ///

1 I understand that I may be subject to sanctions in the event that the  
2 accompanying Answering Brief is not in conformity with the requirements of the  
3 Nevada Rules of Appellate Procedure.

4 DATED this 15<sup>th</sup> day of January, 2014.

5  
6   
7 J. THOMAS SUSICH, ESQ.  
8 Nevada State Bar No. 898  
9 Division Senior Legal Counsel  
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11 1675 East Prater Way, Suite 103  
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13 (775) 284-9533  
14 (775) 284-9513 - Fax  
15 Attorney for Respondent ESD  
16  
17  
18  
19  
20

1 CERTIFICATE OF SERVICE

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

9 Ron Sung, Esq.  
10 I. Kristine Bergstrom, Esq.  
11 Nevada Legal Services, Inc.  
530 S. Sixth Street  
Las Vegas, NV 89101

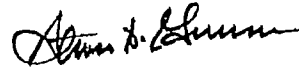
12 Greystone Park Apartments  
13 5050 S. Duneville  
Las Vegas, NV 89118

14 *And via e-file Courtesy Copy to:*

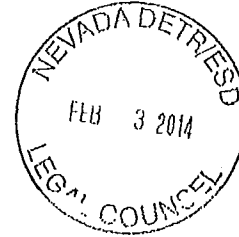
15 Dept01LC@clarkcountycourts.us

16  
17 DATED this 15<sup>th</sup> day of January, 2014

18   
19 SHERI C. HORNSBY  
20

  
CLERK OF THE COURT

1 **PRB**  
2 **RON SUNG, ESQ.**  
3 Nevada State Bar No. 13047C  
4 **I. KRISTINE BERGSTROM, ESQ.**  
5 Nevada State Bar No. 10841  
6 Nevada Legal Services, Inc.  
7 530 South Sixth Street  
8 Las Vegas, Nevada 89101  
9 (702) 386-0404 x148  
10 Facsimile (702) 388-1641  
11 *Attorneys for Calvin Murphy*



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

9 **CALVIN MURPHY,**

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

10 **Petitioner,**

11 **-vs-**

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

**Respondents.**

**PETITIONER'S REPLY BRIEF**

Petitioner, CALVIN MURPHY, by and through his attorney, Ron Sung, Esq., and Nevada Legal Services, Inc., submits the following REPLY BRIEF.

DATED this 29th day of January, 2014.

Respectfully submitted,

RON SUNG, ESQ.  
Nevada State Bar No. 13047C  
J. KRISTINE BERGSTROM, ESQ.  
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*Attorneys for Calvin Murphy.*

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TABLE OF AUTHORITIES

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<i>State, Emp. Sec. Dep't. v. Evans</i> , 111 Nev. 1118, 901 P.2d 156 (1995).....	1,2

1       Petitioner, CALVIN MURPHY (hereinafter "Murphy") hereby files his  
2 Reply to the Answering Brief filed by Respondent, Nevada Employment  
3 Security Division (hereinafter "ESD").

4                               ARGUMENT

5       In its Answer, ESD argues that the "decision of the Referee and the  
6 Board of Review was supported by substantial evidence in the  
7 Administrative Record and is consistent with the Supreme Court's  
8 decisions in *Evans* . . . and *Bundley* . . . ." Answering Brief ("Answer") at 15,  
9 lines 16-18. ESD, however, misinterprets the available record to fit an  
10 incorrect interpretation of the law.

11   ***A. Murphy Remained Incarcerated Because He Could Not Afford Bail***

12       ESD attempts to distinguish this case from *State, Emp. Sec. Dep't. v.*  
13 *Evans* on the grounds that the claimant in *Evans* had a different reason for  
14 incarceration than Murphy's incarceration. ESD misinterprets that the  
15 *Evans* court found the claimant was incarcerated because she could not  
16 afford bail, not her criminal conduct. Answer at 8, lines 6-8; see *State, Emp.*  
17 *Sec. Dep't. v. Evans*, 111 Nev. 1118, 1119; 901 P.2d 156, 156 (1995). ESD  
18 then argues Murphy was incarcerated solely due to his criminal conduct.  
19 Answer at 8, lines 15-21. ESD, however, fails to note that Murphy clearly  
stated in the record that he could not afford the \$40,000 amount for bail.

1 (Record, p. 47). Thus, ESD fails to distinguish *Evans* with this case  
2 because Murphy, like *Evans*, could not afford the bail needed to avoid pre-  
3 trial incarceration and report to work.

4 ***B. Murphy Dutifully Notified His Employer While Incarcerated***

5 ESD also distinguishes this case from *Evans* and *Bundley* based on  
6 the means Murphy used to notify his employer. ESD argues Murphy was  
7 "unable to directly communicate with his employer" and "did not keep his  
8 employer notified" about his whereabouts. Answer at 12, lines 1, 9-10. In  
9 *Evans*, the Court did not question whether employees directly or personally  
10 informed their employer, only whether they "dutifully notified" their  
11 employer. *Evans*, 111 Nev. at 1119, 901 P.2d at 156. Under *Evans*, dutiful  
12 notice only requires imparting information to the employer that it will be  
13 "impossible . . . to appear for work." *Evans*, 111 Nev. at 1119, 901 P.2d at  
14 156. Under *Bundley*, the claimant acted with misconduct only if the  
15 employee deliberately violates the absence policy without proper  
16 justification. *Clark County School Dist. v. Bundley*, 122 Nev. 1440, 1449;  
17 148 P.3d 750, 757 (2006).

18 In this case, Tina Watkins, Murphy's girlfriend, informed Murphy's  
19 employer about his indefinite incarceration on two separate occasions.  
(Record, p. 18 and 51-52). Murphy had no other way but to use his



1 girlfriend to communicate with his employer. (Record, p. 50). The employer  
2 even testified about receiving this information two days before Murphy's  
3 next scheduled work day. (Record, p. 34-35). Thus, ESD fails to distinguish  
4 *Evans* and *Bundley* from this case because Murphy dutifully notified his  
5 employer via Tina Watkins about his indefinite absence and had a  
6 justifiable reason for his absence, his inability to afford bail.

### 7 CONCLUSION

8 Contrary to ESD's assertion, Murphy was incarcerated because of his  
9 poverty. Furthermore, Murphy dutifully notified his employer because his  
10 employer knew he would not be at work. Under existing law, Murphy did  
11 not commit misconduct. Thus, Murphy qualifies for unemployment benefits  
12 under Nevada law and this Court should reverse ESD's decision.

### 13 NRAP 28.2 CERTIFICATE

14 1. I hereby certify that this brief complies with the formatting  
15 requirements of NRAP 32(a)(4), the typeface requirements of NRAP  
16 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this  
17 brief has been prepared in a proportionally spaced typeface using Microsoft  
18 Office Word 2007 in Arial 14-point font.

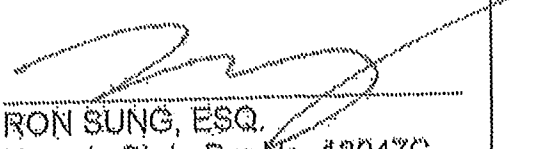
19 2. I further certify that this brief complies with the page- or type-  
volume limitations of NRAP 32(a)(7) because, excluding the parts of the

1 brief exempted by NRAP 32(a)(7)(C), it does not exceed 30 pages and is  
2 proportionately spaced, has a typeface of 14 points or more, and contains  
3 approximately 582 words (less than 14,000).

4 3. Finally, I hereby certify that I have read this appellate brief, and  
5 to the best of my knowledge, information, and belief, it is not frivolous or  
6 interposed for any improper purpose. I further certify that this brief complies  
7 with all applicable Nevada Rules of Appellate Procedure, in particular  
8 NRAP 28(e)(1), which requires every assertion in the brief regarding  
9 matters in the record to be supported by a reference to the page and  
10 volume number, if any, of the transcript or appendix where the matter relied  
11 on is to be found. I understand that I may be subject to sanctions in the  
12 event that the accompanying brief is not in conformity with the  
13 requirements of the Nevada Rules of Appellate Procedure.

14 DATED this 24th day of January, 2014

15 Respectfully submitted,  
16 Nevada Legal Services, Inc.

17   
18 RON SUNG, ESQ.  
19 Nevada State Bar No. 13047C  
I, KRISTINE BERGSTROM, ESQ.  
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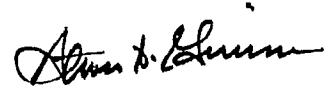
**CERTIFICATE OF MAILING**

I hereby certify that on the 29th day of January, 2011,  
mailed a true and correct copy of the above and foregoing APPELLANT'S  
REPLY BRIEF to the Respondent first-class postage fully prepaid thereon,  
by placing the same in the United States Mail at Las Vegas, Nevada,  
addressed as follows:

J. THOMAS SUSICH, ESQ.  
1675 East Prater Way, #103  
Sparks, NV 89434  
Attorney for Respondents

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

  
An Employee of Nevada Legal Services



CLERK OF THE COURT

1 **ORDR**  
2 RON SUNG, ESQ.  
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4 I. KRISTINE BERGSTROM, ESQ.  
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11 Attorneys for Calvin Murphy

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 CALVIN MURPHY,

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

10 Petitioner,

11 -vs-

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

22 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"/> Slip Dis	<input checked="" type="checkbox"/> Sim Jdgmt	FINAL DISPOSITIONS
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Slip 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"/> Min to Dis (by deft)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied/Paid in full

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;

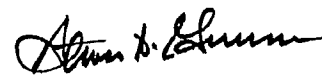
IT IS HEREBY ORDERED that Motion for Judicial Review is GRANTED and the Employment Security Division's decision is REVERSED.

DATED this 22 day of February, 2014.

*Kenneth Cory*  
JUDGE KENNETH CORY

Prepared by:  
NEVADA LEGAL SERVICES, INC.

RON SUNG, ESQ.  
Nevada State Bar No. 13047C  
I. KRISTINE BERGSTROM, ESQ.  
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1 **NEO**  
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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 **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 28<sup>th</sup> 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 8<sup>th</sup> day of May, 20  .

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

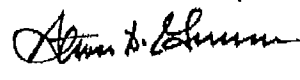
I hereby certify that on this 4th day of May, 2014, I served the foregoing NOTICE OF ENTRY OF ORDER and attached ORDER upon the following person(s); by depositing a copy of same in a sealed envelope in the United States Mail, postage pre-paid, to the following:

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**  
2 **RON SUNG, ESQ.**  
3 **Nevada State Bar No. 13047C**  
4 **I. KRISTINE BERGSTROM, ESQ.**  
5 **Nevada State Bar No. 10841**  
6 **Nevada Legal Services, Inc.**  
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11 **Attorneys for Calvin Murphy**

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

12 **CALVIN MURPHY,**  
13  
14 **Petitioner,**

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

15 **-vs-**

16 **EMPLOYMENT SECURITY DIVISION,**  
17 **STATE OF NEVADA, and RENEE L.**  
18 **OLSEN, as Administrator**  
19 **of the EMPLOYMENT SECURITY**  
20 **DIVISION; KATIE JOHNSON, as**  
21 **Chairperson the EMPLOYMENT**  
22 **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 Judgment	<b>FINAL DISPOSITIONS</b>
<input type="checkbox"/> Involuntary (stat) Dis	<input type="checkbox"/> Stip Judgment	<input type="checkbox"/> Non-Jury Trial	<input type="checkbox"/> Time Limit Expired
<input type="checkbox"/> Judgment on Facts Award	<input type="checkbox"/> Default Judgment	<input type="checkbox"/> Jury Trial	<input type="checkbox"/> Dismissed (with or without prejudice)
<input type="checkbox"/> Rem to Dis (by debt)	<input type="checkbox"/> Transferred		<input type="checkbox"/> Judgment Satisfied

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;

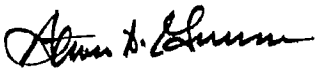
IT IS HEREBY ORDERED that Motion for Judicial Review is GRANTED and the Employment Security Division's decision is REVERSED.

DATED this 24 day of June, 2014.

JUDGE KENNETH CORY

Prepared by:  
NEVADA LEGAL SERVICES, INC.

RON SUNG, ESQ.  
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CLERK OF THE COURT

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2 Nevada State Bar No. 898  
STATE OF NEVADA, Department of  
3 Employment, Training & Rehabilitation (DETR),  
Employment Security Division (ESD)  
4 1325 Corporate Boulevard, Suite C  
Reno, Nevada 89502  
5 Telephone No.: (775) 823-6673  
Facsimile No.: (775) 823-6691  
6 *Attorney for DETR/ESD*

7  
8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 CALVIN STEVEN MURPHY,

11 Petitioner,

12 vs.

CASE NO.: A689756

DEPT. NO.: I

13 EMPLOYMENT SECURITY DIVISION,  
STATE OF NEVADA and RENEE OLSON,  
14 in her capacity as Administrator of the  
EMPLOYMENT SECURITY DIVISION;  
15 KATIE JOHNSON, in her capacity as  
Chairperson of the EMPLOYMENT  
16 SECURITY DIVISION BOARD OF  
REVIEW; and GREYSTONE PARK  
17 APARTMENTS, as employer,

18 Respondents.

19  
20 NOTICE OF APPEAL

21 TO: PETITIONER and the CLERK OF THE ABOVE-ENTITLED COURT:

22 NOTICE IS HEREBY GIVEN that the Administrator, State of Nevada,  
23 Department of Employment, Training and Rehabilitation, Employment Security Division (ESD),  
24 Respondent above-named, hereby appeals to the Supreme Court of Nevada from the Order

1 granting Petition for Judicial Review and reversing the decision of the Nevada Employment  
2 Security Division Board of Review, entered in this action on April 28, 2014.

3 DATED this 13<sup>th</sup> day of May, 2014.

4  
5   
6 J. THOMAS SUSICH, ESQ.

Attorney for Nevada ESD Respondents

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 APPEAL, by placing the same within an envelope  
5 upon which all first class postage and fees were fully prepaid and affixed and which was  
6 thereafter sealed and deposited for mailing with the United States Postal Service at Reno,  
7 Nevada, addressed for delivery as follows:

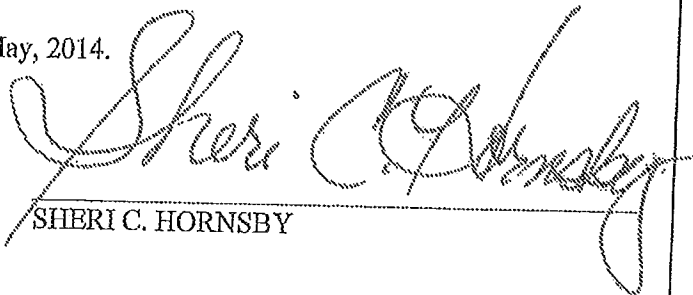
8 Ron Sung, Esq.  
9 I. Kristine Bergstrom, Esq.  
10 Nevada Legal Services, Inc.  
530 S. Sixth Street  
Las Vegas, NV 89101

11 Greystone Park Apartments  
12 5050 S. Duneville  
Las Vegas, NV 89118

13 *And via e-file Courtesy Copy to:*

14 Dept01LC@clarkcountycourts.us

15 DATED this 13<sup>th</sup> day of May, 2014.

16   
17  
18 SHERI C. HORNSBY