

1 **NOAS**
2 TROY C. JORDAN, ESQ.
3 Nevada State Bar No. 9073
4 State of Nevada, Department of
5 Employment, Training & Rehabilitation (DETR)
6 Employment Security Division (ESD)
7 500 East Third Street
8 Carson City, NV 89713
9 Telephone No.: (775) 684-3996
10 Facsimile No.: (775) 684-3992
11 *Attorney for DETR/ESD*

Electronically Filed
Aug 04 2021 10:40 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 KELLY EPPINGER,

10 Petitioner,

11 vs.

CASE NO.: A-20-826310-P

DEPT. NO.: XV

12 EMPLOYMENT SECURITY DIVISION,
13 STATE OF NEVADA and KIMBERLY GAA
14 [**now, LYNDIA PARVEN**] in her capacity as
15 Administrator of the EMPLOYMENT
16 SECURITY DIVISION; J. THOMAS SUSICH
in his capacity as the Chairperson of the
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW, and LINDEN &
ASSOCIATES PC, as employer,

17 Respondents.

18 **NOTICE OF APPEAL**

19 The Nevada Employment Security Division (ESD) and its Administrator hereby appeal the
20 decision of the Eighth Judicial District Court granting the Petition for Judicial Review in the above-
21 captioned case to the Nevada Supreme Court.

22 **DATED** this 30th day of July, 2021.

23 /s/ TROY C. JORDAN

TROY C. JORDAN, 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 Nevada, over
3 the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of
4 the foregoing NOTICE OF APPEAL, *by either* electronic means (NEFCR 9), as indicated by an
5 email address set forth below, *and/or* by placing the same within an envelope and depositing said
6 envelope with the State of Nevada Mail for postage and mailing from Carson City, Nevada,
7 addressed for delivery as follows:

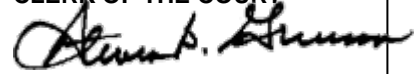
8 Elizabeth S. Carmona, Esq.
9 Nevada Legal Services, Inc.
10 530 South 6th Street
11 Las Vegas, NV 89101
12 ecarmona@nslaw.net
13 Attorney for Petitioner Kelly Eppinger

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

15 Dept15LC@clarkcountycourts.us

16 **DATED** this 30th day of July, 2021.

17 /s/ Tiffani M. Silva
18 TIFFANI M. SILVA
19
20
21
22
23
24



1 **ASTA**
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5 Employment, Training & Rehabilitation (DETR)
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7 **DISTRICT COURT**

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14 [**now, LYNDA PARVEN**] in her capacity as
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17 in his capacity as the Chairperson of the
18 EMPLOYMENT SECURITY DIVISION
19 BOARD OF REVIEW, and LINDEN &
20 ASSOCIATES PC, as employer,

21 Respondents.

22 **CASE APPEAL STATEMENT**

23 1. Name of appellant filing this case appeal statement: **Employment Security Division,**
24 **State of Nevada, Lynda Parvin, in her capacity as Administrator of the Employment**
Security Division, and J. Thomas Susich in his capacity as Chairperson of the Employment
Security Division Board of Review.

2. Identify the judge issuing the decision, judgment, or order appealed from: **The**
Honorable Joe Hardy.

1 3. Identify each appellant and the name and address of counsel for each appellant:
2 **Employment Security Division, State of Nevada, Lynda Parvin, in her capacity as**
3 **Administrator of the Employment Security Division, and J. Thomas Susich in his capacity**
4 **as Chairperson of the Employment Security Division Board of Review. All are represented**
5 **by Troy C. Jordan, Senior Staff Attorney, Nevada Department of Employment, Training**
6 **and Rehabilitation, 500 E. Third Street, Carson City, NV 89713.**

7 4. Identify each respondent and the name and address of appellate counsel, if known,
8 for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as
9 much and provide the name and address of that respondent's trial counsel): **Kelly Eppinger is**
10 **the Respondent, represented by Elizabeth S. Carmona, Nevada Legal Services, Inc., 530 S.**
11 **Sixth Street, Las Vegas, NV 89101.**

12 5. Indicate whether any attorney identified above in response to question 3 or 4 is not
13 licensed to practice law in Nevada and, if so, whether the district court granted that attorney
14 permission to appear under SCR 42 (attach a copy of any district court order granting such
15 permission): **All attorneys are licensed to practice law in the State of Nevada.**

16 6. Indicate whether appellant was represented by appointed or retained counsel in the
17 district court: **Appellants were represented by retained, staff counsel in the district court.**

18 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
19 **Appellants are represented by retained, staff counsel on appeal.**

20 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the
21 date of entry of the district court order granting such leave: **N/A.**

22 9. Indicate the date the proceedings commenced in the district court (e.g., date
23 complaint, indictment, information, or petition was filed): **December 14, 2020.**

24 ///

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: **After her employment with a physician was changed from full-time to “independent contractor,” Respondent left that employment to work as an independent entity for another entity. When that second entity closed due to the pandemic, Respondent filed for unemployment benefits. The Referee found that Respondent voluntarily quit her position with the physician and denied Respondent’s benefit claim. The Bord of Review affirmed the Referee. The District Court reversed the decision of the Board of Review. This appeal follows.**

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: **N/A**

12. Indicate whether this appeal involves child custody or visitation: **N/A**

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: **There is not the possibility of settlement.**

DATED this 30th day of July, 2021.

/s/ TROY C. JORDAN

TROY C. JORDAN, 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 Nevada, over
3 the age of 18 years; and that on the date hereinbelow set forth, I served a true and correct copy of
4 the foregoing CASE APPEAL STATEMENT, *by either* electronic means (NEFCR 9), as indicated
5 by an email address set forth below, *and/or* by placing the same within an envelope and depositing
6 said envelope with the State of Nevada Mail for postage and mailing from Carson City, Nevada,
7 addressed for delivery as follows:

8 Elizabeth S. Carmona, Esq.
9 Nevada Legal Services, Inc.
10 530 South 6th Street
11 Las Vegas, NV 89101
12 ecarmona@nlslaw.net
13 Attorney for Petitioner Kelly Eppinger

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

15 Dept15LC@clarkcountycourts.us









16 **DATED** this 30th day of July, 2021.

17 /s/ Tiffani M. Silva
18 TIFFANI M. SILVA
19
20
21
22
23
24

CASE SUMMARY**CASE NO. A-20-826310-P****In the Matter of the Petition of
Kelly Eppinger**§
§
§
§
§Location: **Department 15**
Judicial Officer: **Hardy, Joe**
Filed on: **12/14/2020**
Cross-Reference Case **A826310**
Number:**CASE INFORMATION****Statistical Closures**

06/29/2021 Summary Judgment

Case Type: **Other Civil Filings (Petition)**Case
Status: **06/29/2021 Closed****DATE****CASE ASSIGNMENT****Current Case Assignment**Case Number A-20-826310-P
Court Department 15
Date Assigned 12/14/2020
Judicial Officer Hardy, Joe**PARTY INFORMATION****Petitioner Eppinger, Kelly***Lead Attorneys*
Carmona, Elizabeth S
Retained
702-445-4259(W)**DATE****EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

12/14/2020	 Petition for Judicial Review <i>[1] Petition for Judicial Review</i>
12/14/2020	 Statement of Legal Aid Representation and Fee Waiver <i>[2] SOLA</i>
12/14/2020	 Summons Electronically Issued - Service Pending <i>[3] Summons</i>
12/14/2020	 Summons Electronically Issued - Service Pending <i>[4] Summons</i>
12/14/2020	 Summons Electronically Issued - Service Pending <i>[5] Summons</i>
12/14/2020	 Summons Electronically Issued - Service Pending <i>[6] Summons</i>
12/16/2020	 Clerk's Notice of Nonconforming Document <i>[7] Clerk's Notice of Nonconforming Document</i>
12/17/2020	 Certificate of Service <i>[8] Certificate of Service</i>

CASE SUMMARY

CASE NO. A-20-826310-P

12/30/2020	 Notice of Intent to Participate Filed By: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>[9] Notice of Intent to Participate and Defend</i>
01/25/2021	 Record on Appeal Party: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>[10] Record on Appeal</i>
01/25/2021	 Answer Filed By: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>[11] Answer to Complaint</i>
03/04/2021	 Petitioners Opening Brief <i>[12] Opening Brief</i>
04/01/2021	 Answering Brief Filed By: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>[13] Answering Brief</i>
04/27/2021	 Reply <i>[14] Petitioner's Reply Brief</i>
04/27/2021	 Request <i>[15] Request for Submission of Petition for Judicial Review For Decision Without Oral Argument</i>
06/29/2021	 Order Filed By: Petitioner Eppinger, Kelly <i>[16] Order Granting Petition for Judicial Review</i>
07/06/2021	 Notice of Entry of Order <i>[17] Notice of Entry of Order</i>
07/30/2021	 Notice of Appeal Filed By: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>Notice of Appeal</i>
07/30/2021	 Case Appeal Statement Filed By: Respondent Employment Security Division, State of Nevada; Respondent Gaa, Kimberly; Respondent Susich, J. Thomas <i>Case Appeal Statement</i>

DISPOSITIONS

06/29/2021	Order Granting Judicial Review (Judicial Officer: Hardy, Joe) Debtors: Employment Security Division, State of Nevada (Respondent), Kimberly Gaa (Respondent), J. Thomas Susich (Respondent), Linden & Associates PC (Respondent) Creditors: Kelly Eppinger (Petitioner) Judgment: 06/29/2021, Docketed: 06/30/2021
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CASE SUMMARY

CASE NO. A-20-826310-P

HEARINGS

06/09/2021



Petition for Judicial Review (3:00 AM) (Judicial Officer: Hardy, Joe)

Minute Order - No Hearing Held;

Journal Entry Details:

Having reviewed the administrative record, the petition for judicial review, and the parties respective briefs, the Court GRANTS the petition for all the reasons set forth in Petitioner s briefs. The Court will not list all the reasons in this minute order; rather, Petitioner s counsel shall prepare a written order incorporating and detailing Petitioner s statement of facts and arguments as the Court s statement of facts and conclusions of law. Additionally, the answers to all four issues presented are yes and are to be included in the order. Also include the following: The Court reviewed all questions of law de novo and notes the Board s fact-based legal conclusions are entitled to deference. Here, however, Petitioner has met her burden of proof under any standard of review showing that she was entitled to unemployment benefits. The appeal referee s determination and subsequent Board s decision of affirmation are arbitrary and capricious and not supported by substantial evidence because the determination and decision could not have been reached on the facts of this case as contained in the record. Additionally, they ignore the referee s own finding/precedent that Petitioner demonstrated good cause to quit. The Court confines its review to the record on appeal. Petitioner s counsel is to prepare the written order, submit it to Respondent s counsel for review and approval, and submit it to Department 15 s chambers within fourteen days pursuant to EDCR 7.21. At this time, all proposed orders must be submitted via email at dc15inbox@clarkcountycourts.us pursuant to Administrative Order 20-10. CLERK'S NOTE: Minute order electronically served by Courtroom Clerk, Kristin Duncan, to all parties registered for Odyssey File & Serve. (KD 6/10/2021);

DATE

FINANCIAL INFORMATION

Respondent Employment Security Division, State of Nevada

Total Charges

24.00

Total Payments and Credits

24.00

Balance Due as of 7/30/2021

0.00

DISTRICT COURT CIVIL COVER SHEET

clerk
 Case No. **A-20-826310-P** County, Nevada
(Assigned by Clerk's Office)

CASE NO: A-20-826310-P
Department 15

I. Party Information <i>(provide both home and mailing addresses if different)</i>	
Plaintiff(s) (name/address/phone): <div style="text-align: center;"> Kelly Eppinger 10372 Splendor Ridge Avenue Las Vegas, Nevada 89135 702-386-0404 x 128 </div>	Defendant(s) (name/address/phone): <div style="text-align: center;"> Employment Security Division, State of Nevada; Kimberly Gaa as Administrator of ESD; J. Thomas Susich as Chairperson of ESD Board of Review Linden & Associates PC, Employer </div>
Attorney (name/address/phone): <div style="text-align: center;"> Elizabeth S. Carmona, Esq. 530 South 6th Street Las Vegas, Nevada 89101 702-386-0404 x 128 </div>	Attorney (name/address/phone):

II. Nature of Controversy <i>(please select the one most applicable filing type below)</i>		
Civil Case Filing Types		
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input checked="" type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

12/28/20

Date

Signature of initiating party or representative

See other side for family-related case filings.

ORDR

ELIZABETH S. CARMONA, ESQ.
Nevada State Bar No. 14687
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0404, ext. 128
Facsimile: (702) 388-1641
ecarmona@nlslaw.net
Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KELLY EPPINGER,

Petitioner,

**Case No.: A-20-826310-P
Dept No.: XV**

vs.

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA;
KIMBERLY GAA [now, LYNDIA PARVEN],
in her capacity as Administrator of the
EMPLOYMENT SECURITY DIVISION; J.
THOMAS SUSICH, in his capacity as
Chairperson the EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW; and
LINDEN AND ASSOCIATES PC,
as employer,

Respondents.

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter, concerning the decision of the BOARD OF REVIEW, EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA issued on December 3, 2020 and petitioned for Judicial Review by KELLY EPPINGER on December 11, 2020, was considered by Department XV of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Joe Hardy presiding. Having reviewed the pleadings on file, this Court makes the following Findings of Fact and Conclusions of Law:

///

1 **FINDINGS OF FACT**

2 1. Kelly Eppinger (hereinafter “the Petitioner”) worked for Respondent Linden and
3 Associates from May 2019 until January 2020.

4 2. The Petitioner was initially hired, and began working, as an employee at Linden
5 and Associates.

6 3. In October 2019, Linden and Associates demanded that the Petitioner agree to be
7 changed from an employee to an independent contractor.

8 4. The Petitioner did not want to be reclassified as an independent contractor;
9 therefore, she scheduled a meeting with Dr. Linden to further discuss this demand.

10 5. Before the Petitioner had an opportunity to meet with Dr. Linden, she was
11 reclassified as an independent contractor without her consent.

12 6. After learning of her reclassification, the Petitioner began searching for new
13 employment.

14 7. On November 26, 2019, the Petitioner secured an offer of employment at Summit
15 Mental Health, which paid more than her wage at Linden and Associates.

16 8. When the Petitioner ultimately met with Dr. Linden, she asked him if he would
17 match the higher rate of pay offered by Summit Mental Health. In response, Dr. Linden advised
18 the Petitioner to accept the job at Summit Mental Health because he was unable to match the
19 higher rate of pay.

20 9. On January 1, 2020, the Petitioner then left Linden and Associates to begin working
21 at Summit Mental Health. The Petitioner worked at Summit Mental Health until a COVID-19-
22 related business closure.

23 10. The Petitioner then applied for unemployment insurance benefits with Respondent
24 Employment Security Division (hereinafter “ESD”).

11 11. In an Adjudication dated June 30, 2020, ESD found the Petitioner ineligible to
12 receive unemployment insurance benefits because good cause for quitting had not been shown.

13 12. The Petitioner then filed a timely appeal.

14 13. At the Petitioner’s appeal hearing, she testified that Linden and Associates’
15 decision to reclassify her as an independent contractor was the catalyst for her search of new
16 employment, but that she ultimately left Linden and Associates because she offered a higher rate
17 of pay at Summit Mental Health, which Dr. Linden could not match.

14. During the appeals hearing, Counsel for the Petitioner attempted to admit earnings statements and weekly payroll reports from Summit Mental Health, which would have proven the higher rate of pay and substantiated the Petitioner's timeline, as it relates to how she secured employment at Summit Mental Health prior to leaving Linden and Associates.

15. The Appeals Referee refused to admit the evidence based on the reasoning that “the documentation...does not substantiate the employment on or proximate to the separation date” and “the check earning statements are over a month after the separation date.”

16. On October 15, 2020, the Appeals Referee determined that the Petitioner did not have good cause to quit because she quit due to personal, non-compelling reasons and prior to exhausting all reasonable alternatives available to her.

17. The Petitioner timely appealed the Appeals Referee's decision to the Respondent Board of Review.

18. On December 3, 2020, the Board of Review entered its decision, affirming the decision of the Appeals Referee.

19. On December 11, 2020, the Petitioner initiated the instant case by filing a Petition for Judicial Review.

CONCLUSIONS OF LAW

1. NRS 612.530(1) specifically provides “within 11 days after the decision of the Board of Review has become final, any party aggrieved thereby or the Administrator may secure judicial review thereof by commencing an action in the district court of the county where the employment which is the basis of the claim was performed for the review of the decision.”

2. As to factual issues, the District Court's function is to review administrative findings for arbitrariness, capriciousness, or lack of substantial evidence. *Employment Security Dept. v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984).

3. Substantial evidence is that “quantity and quality of evidence which a reasonable person could accept as adequate to support a conclusion.” *Employment Security Dept. v. Cline*, 109 Nev. 74, 847 P.2d 736 (1993); *Employment Security Dept. v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986) (citation omitted).

4. Under NRS 612.380, a person is ineligible for unemployment benefits if she voluntarily leaves her job without good cause. While there is no statutory definition for “good cause,” ESD has found good cause when a claimant can demonstrate reasons so urgent and

1 compelling that the claimant had no reasonable alternative to quitting, and that the claimant
2 exhausted reasonable recourses prior to leaving her job. *Flippen v. Nev. Empl. Sec. Div.*, 2014
3 Nev. Unpub. LEXIS 2173, at *3 (2-1 decision) (Hardesty, J., dissenting).

4 5. The Court reviewed all questions of law de novo and notes the Board of Review's
5 fact-based legal conclusions are entitled to deference.

6 6. Here, however, the Petitioner has met her burden of proof under any standard of
7 review showing that she was entitled to unemployment benefits.

8 7. The Appeal Referee's determination and subsequent Board of Review decision of
9 affirmation are arbitrary and capricious and not supported by substantial evidence because the
10 determination and decision could not have been reached on the facts of this case as contained in
11 the record.

12 8. Additionally, they ignore the ESD's own finding/precedent that the Petitioner
13 demonstrated good cause to quit.

14 9. The Court confines its review to the record on appeal.

15 10. There is substantial evidence in the record to support that the Petitioner voluntarily
16 quit her job with good cause.

17 11. The Petitioner had good cause to quit due to Linden and Associates' decision to
18 reclassify her employment status from an employee to an independent contractor, which was made
19 without her consent.

20 12. The Petitioner had good cause to quit because she secured a higher paying job at
21 Summit Mental Health prior to leaving Linden and Associates.

22 13. The Board of Review abused its discretion by upholding the Appeals Referee's
23 decision to find the Petitioner not credible, as it pertained to her testimony regarding how she
24 secured employment at Summit Mental Health prior to leaving Linden and Associates.

14. The Board of Review abused its discretion by upholding the Appeals Referee's
decision to not admit relevant earnings statements into the record that would have substantiated
the Petitioner's testimony that she secured a higher paying job at Summit Mental Health prior to
quitting Linden and Associates.

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1 15. Thus, the decision of the Appeals Referee, and the affirmation by the Board of
2 Review was not supported by substantial evidence.

3 Accordingly, based upon the aforementioned Findings of Fact and Conclusions of Law,
4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Petitioner Kelly
Eppinger's Petition for Judicial Review filed on December 11, 2020 is granted; and

5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Decision of the
6 Board of Review, Employment Security Division, Department of Employment, Training and
Rehabilitation is reversed.

7 Dated this _____ day of _____, 2021.

Dated this 29th day of June, 2021

8 
9

10 JOE HARDY, DISTRICT COURT JUDGE

11 Approved as to form and content:

5FA 90D A181 7CE9
Joe Hardy
District Court Judge

12 
13

14 _____
15 ELIZABETH S. CARMONA, ESQ.
16 Nevada State Bar No. 14687
NEVADA LEGAL SERVICES, INC.
17 530 South Sixth Street
18 Las Vegas, Nevada 89101
Telephone: (702) 386-0404, ext. 128
Facsimile: (702) 388-1641
19 ecarmona@nslaw.net
Attorney for Petitioner

20
21 /s/ Troy C. Jordan

22 TROY C. JORDAN, ESQ.
23 Nevada State Bar No. 9073
State of Nevada, Department of
24 Employment, Training & Rehabilitation (DETR)

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2 500 East Third Street
3 Carson City, Nevada 89713
4 Telephone: (775) 684-3996
5 Facsimile: (775) 684-3992
6 *Attorney for DETR/ESD*



Mon 6/28/2021 8:30 AM

Troy Jordan <tjordan@detr.nv.gov>

RE: Proposed Order - Kelly Eppinger v. ESD

To  Elizabeth Carmona

You may affix my electronic signature

From: Elizabeth Carmona <ecarmona@nslaw.net>

Sent: Wednesday, June 23, 2021 2:26 PM

To: Troy Jordan <tjordan@detr.nv.gov>

Subject: Proposed Order - Kelly Eppinger v. ESD

Good afternoon, Mr. Jordan.

Please see attached for my Proposed Order for case no. A-20-826310-P, Kelly Eppinger v. ESD.

If you approve of the Proposed Order, please provide my office with the authority to use your electronic signature. I would appreciate a response by Monday, June 28th at 5:00 p.m.

Thank you,

Elizabeth S. Carmona, Esq.

Senior Attorney

NEVADA LEGAL SERVICES, INC.

530 South 6th Street

Las Vegas, Nevada 89101

Telephone: (702) 386-0404 x 128

Fax: (702) 388-1641

ecarmona@nslaw.net



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 In the Matter of the Petition of
7 Kelly Eppinger

CASE NO: A-20-826310-P
DEPT. NO. Department 15

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 6/29/2021

14 Tiffani Silva

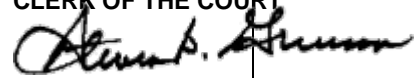
tmsilva@detr.nv.gov

15 Troy Jordan, Esq.

ESDLegal@detr.nv.gov

16 Elizabeth Carmona, Esq.

ecarmona@nlslaw.net



NEO
ELIZABETH S. CARMONA, ESQ.
Nevada Bar No. 14687
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0404, ext. 128
Facsimile: (702) 388-1641
Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KELLY EPPINGER,

Petitioner,

**Case No.: A-20-826310-P
Dept No.: XV**

vs.

NOTICE OF ENTRY OF ORDER

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA;
KIMBERLY GAA [now, LYNDIA PARVEN],
in her capacity as Administrator of the
EMPLOYMENT SECURITY DIVISION; J.
THOMAS SUSICH, in his capacity as
Chairperson the EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW; and
LINDEN AND ASSOCIATES PC,
as employer,

Respondents.

TO: EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA, Respondent;

TO: KIMBERLY GAA [now. LYNDIA PARVEN], Respondent;

TO: J. THOMAS SUSICH, Respondent; and

TO: LINDEN AND ASSOCIATES PC, Respondent;

YOU WILL PLEASE TAKE NOTICE that on the 29th day of June, 2021, an Order was
entered in the above-entitled action, a copy of which is attached hereto.

///

1 DATED this 30th day of June, 2021.

2 Respectfully submitted,

3
4 By:



5 ELIZABETH S. CARMONA, ESQ.
6 Nevada State Bar No. 14687
7 **NEVADA LEGAL SERVICES, INC.**
8 530 South Sixth Street
9 Las Vegas, Nevada 89101
10 Telephone: (702) 386-0404, ext. 128
11 Facsimile: (702) 388-1641
12 ecarmona@nlslaw.net
13 *Attorney for Petitioner*
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- 24

TROY C. JORDAN, ESQ.
500 EAST THIRD STREET
CARSON CITY, NEVADA 89713

LINDEN & ASSOCIATES PC
4900 RICHMOND SQUARE #102
OKLAHOMA CITY, OK 73118



Employee of Nevada Legal Services

ORDR

ELIZABETH S. CARMONA, ESQ.
Nevada State Bar No. 14687
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
Las Vegas, Nevada 89101
Telephone: (702) 386-0404, ext. 128
Facsimile: (702) 388-1641
ecarmona@nlslaw.net
Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

KELLY EPPINGER,

Petitioner,

**Case No.: A-20-826310-P
Dept No.: XV**

vs.

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA;
KIMBERLY GAA [now, LYNDIA PARVEN],
in her capacity as Administrator of the
EMPLOYMENT SECURITY DIVISION; J.
THOMAS SUSICH, in his capacity as
Chairperson the EMPLOYMENT SECURITY
DIVISION BOARD OF REVIEW; and
LINDEN AND ASSOCIATES PC,
as employer,

Respondents.

ORDER GRANTING PETITION FOR JUDICIAL REVIEW

This matter, concerning the decision of the BOARD OF REVIEW, EMPLOYMENT SECURITY DIVISION, STATE OF NEVADA issued on December 3, 2020 and petitioned for Judicial Review by KELLY EPPINGER on December 11, 2020, was considered by Department XV of the Eighth Judicial District Court, in and for Clark County, Nevada, with Judge Joe Hardy presiding. Having reviewed the pleadings on file, this Court makes the following Findings of Fact and Conclusions of Law:

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1 **FINDINGS OF FACT**

2 1. Kelly Eppinger (hereinafter “the Petitioner”) worked for Respondent Linden and
3 Associates from May 2019 until January 2020.

4 2. The Petitioner was initially hired, and began working, as an employee at Linden
5 and Associates.

6 3. In October 2019, Linden and Associates demanded that the Petitioner agree to be
7 changed from an employee to an independent contractor.

8 4. The Petitioner did not want to be reclassified as an independent contractor;
9 therefore, she scheduled a meeting with Dr. Linden to further discuss this demand.

10 5. Before the Petitioner had an opportunity to meet with Dr. Linden, she was
11 reclassified as an independent contractor without her consent.

12 6. After learning of her reclassification, the Petitioner began searching for new
13 employment.

14 7. On November 26, 2019, the Petitioner secured an offer of employment at Summit
15 Mental Health, which paid more than her wage at Linden and Associates.

16 8. When the Petitioner ultimately met with Dr. Linden, she asked him if he would
17 match the higher rate of pay offered by Summit Mental Health. In response, Dr. Linden advised
18 the Petitioner to accept the job at Summit Mental Health because he was unable to match the
19 higher rate of pay.

20 9. On January 1, 2020, the Petitioner then left Linden and Associates to begin working
21 at Summit Mental Health. The Petitioner worked at Summit Mental Health until a COVID-19-
22 related business closure.

23 10. The Petitioner then applied for unemployment insurance benefits with Respondent
24 Employment Security Division (hereinafter “ESD”).

11 11. In an Adjudication dated June 30, 2020, ESD found the Petitioner ineligible to
12 receive unemployment insurance benefits because good cause for quitting had not been shown.

13 12. The Petitioner then filed a timely appeal.

14 13. At the Petitioner’s appeal hearing, she testified that Linden and Associates’
15 decision to reclassify her as an independent contractor was the catalyst for her search of new
16 employment, but that she ultimately left Linden and Associates because she offered a higher rate
17 of pay at Summit Mental Health, which Dr. Linden could not match.

14. During the appeals hearing, Counsel for the Petitioner attempted to admit earnings statements and weekly payroll reports from Summit Mental Health, which would have proven the higher rate of pay and substantiated the Petitioner's timeline, as it relates to how she secured employment at Summit Mental Health prior to leaving Linden and Associates.

15. The Appeals Referee refused to admit the evidence based on the reasoning that “the documentation...does not substantiate the employment on or proximate to the separation date” and “the check earning statements are over a month after the separation date.”

16. On October 15, 2020, the Appeals Referee determined that the Petitioner did not have good cause to quit because she quit due to personal, non-compelling reasons and prior to exhausting all reasonable alternatives available to her.

17. The Petitioner timely appealed the Appeals Referee's decision to the Respondent Board of Review.

18. On December 3, 2020, the Board of Review entered its decision, affirming the decision of the Appeals Referee.

19. On December 11, 2020, the Petitioner initiated the instant case by filing a Petition for Judicial Review.

CONCLUSIONS OF LAW

1. NRS 612.530(1) specifically provides “within 11 days after the decision of the Board of Review has become final, any party aggrieved thereby or the Administrator may secure judicial review thereof by commencing an action in the district court of the county where the employment which is the basis of the claim was performed for the review of the decision.”

2. As to factual issues, the District Court's function is to review administrative findings for arbitrariness, capriciousness, or lack of substantial evidence. *Employment Security Dept. v. Weber*, 100 Nev. 121, 676 P.2d 1318 (1984).

3. Substantial evidence is that “quantity and quality of evidence which a reasonable person could accept as adequate to support a conclusion.” *Employment Security Dept. v. Cline*, 109 Nev. 74, 847 P.2d 736 (1993); *Employment Security Dept. v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986) (citation omitted).

4. Under NRS 612.380, a person is ineligible for unemployment benefits if she voluntarily leaves her job without good cause. While there is no statutory definition for “good cause,” ESD has found good cause when a claimant can demonstrate reasons so urgent and

1 compelling that the claimant had no reasonable alternative to quitting, and that the claimant
2 exhausted reasonable recourses prior to leaving her job. *Flippen v. Nev. Empl. Sec. Div.*, 2014
3 Nev. Unpub. LEXIS 2173, at *3 (2-1 decision) (Hardesty, J., dissenting).

4 5. The Court reviewed all questions of law de novo and notes the Board of Review's
5 fact-based legal conclusions are entitled to deference.

6 6. Here, however, the Petitioner has met her burden of proof under any standard of
7 review showing that she was entitled to unemployment benefits.

8 7. The Appeal Referee's determination and subsequent Board of Review decision of
9 affirmation are arbitrary and capricious and not supported by substantial evidence because the
10 determination and decision could not have been reached on the facts of this case as contained in
11 the record.

12 8. Additionally, they ignore the ESD's own finding/precedent that the Petitioner
13 demonstrated good cause to quit.

14 9. The Court confines its review to the record on appeal.

15 10. There is substantial evidence in the record to support that the Petitioner voluntarily
16 quit her job with good cause.

17 11. The Petitioner had good cause to quit due to Linden and Associates' decision to
18 reclassify her employment status from an employee to an independent contractor, which was made
19 without her consent.

20 12. The Petitioner had good cause to quit because she secured a higher paying job at
21 Summit Mental Health prior to leaving Linden and Associates.

22 13. The Board of Review abused its discretion by upholding the Appeals Referee's
23 decision to find the Petitioner not credible, as it pertained to her testimony regarding how she
24 secured employment at Summit Mental Health prior to leaving Linden and Associates.

14. The Board of Review abused its discretion by upholding the Appeals Referee's
decision to not admit relevant earnings statements into the record that would have substantiated
the Petitioner's testimony that she secured a higher paying job at Summit Mental Health prior to
quitting Linden and Associates.

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1 15. Thus, the decision of the Appeals Referee, and the affirmation by the Board of
2 Review was not supported by substantial evidence.

3 Accordingly, based upon the aforementioned Findings of Fact and Conclusions of Law,
4 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Petitioner Kelly
Eppinger's Petition for Judicial Review filed on December 11, 2020 is granted; and

5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Decision of the
6 Board of Review, Employment Security Division, Department of Employment, Training and
Rehabilitation is reversed.

7 Dated this _____ day of _____, 2021.

Dated this 29th day of June, 2021

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9

10 JOE HARDY, DISTRICT COURT JUDGE

11 Approved as to form and content:

5FA 90D A181 7CE9
Joe Hardy
District Court Judge

12 
13

14 _____
15 ELIZABETH S. CARMONA, ESQ.
16 Nevada State Bar No. 14687
NEVADA LEGAL SERVICES, INC.
17 530 South Sixth Street
18 Las Vegas, Nevada 89101
Telephone: (702) 386-0404, ext. 128
Facsimile: (702) 388-1641
19 ecarmona@nslaw.net
Attorney for Petitioner

20
21 /s/ Troy C. Jordan _____

22 TROY C. JORDAN, ESQ.
23 Nevada State Bar No. 9073
State of Nevada, Department of
24 Employment, Training & Rehabilitation (DETR)

1 Employment Security Division (ESD)
2 500 East Third Street
3 Carson City, Nevada 89713
4 Telephone: (775) 684-3996
5 Facsimile: (775) 684-3992
6 *Attorney for DETR/ESD*



Mon 6/28/2021 8:30 AM

Troy Jordan <tjordan@detr.nv.gov>

RE: Proposed Order - Kelly Eppinger v. ESD

To Elizabeth Carmona

You may affix my electronic signature

From: Elizabeth Carmona <ecarmona@nslaw.net>

Sent: Wednesday, June 23, 2021 2:26 PM

To: Troy Jordan <tjordan@detr.nv.gov>

Subject: Proposed Order - Kelly Eppinger v. ESD

Good afternoon, Mr. Jordan.

Please see attached for my Proposed Order for case no. A-20-826310-P, Kelly Eppinger v. ESD.

If you approve of the Proposed Order, please provide my office with the authority to use your electronic signature. I would appreciate a response by Monday, June 28th at 5:00 p.m.

Thank you,

Elizabeth S. Carmona, Esq.

Senior Attorney

NEVADA LEGAL SERVICES, INC.

530 South 6th Street

Las Vegas, Nevada 89101

Telephone: (702) 386-0404 x 128

Fax: (702) 388-1641

ecarmona@nslaw.net



1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 In the Matter of the Petition of
7 Kelly Eppinger

CASE NO: A-20-826310-P
DEPT. NO. Department 15

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9 **AUTOMATED CERTIFICATE OF SERVICE**

10 This automated certificate of service was generated by the Eighth Judicial District
11 Court. The foregoing Order was served via the court's electronic eFile system to all
12 recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 6/29/2021

14 Tiffani Silva

tmsilva@detr.nv.gov

15 Troy Jordan, Esq.

ESDLegal@detr.nv.gov

16 Elizabeth Carmona, Esq.

ecarmona@nlslaw.net

CLERK'S NOTE: Minute order electronically served by Courtroom Clerk, Kristin Duncan, to all parties registered for Odyssey File & Serve. (KD 6/10/2021)

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER; DISTRICT COURT MINUTES

KELLY EPPINGER,

Plaintiff(s),

vs.

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA; KIMBERLY GAA
[now, LYNDIA PARVEN] in her capacity as
Administrator of the EMPLOYMENT
SECURITY DIVISION; J. THOMAS SUSICH
in his capacity as the Chairperson of the
EMPLOYMENT SECURITY DIVISION
BOARD OF REVIEW; LINDEN &
ASSOCIATES PC, as employer,

Defendant(s),

Case No: A-20-826310-P

Dept No: XV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 30 day of July 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk