

NO. 83322

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 01 2021 09:09 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA, EMPLOYMENT SECURITY DIVISION;
PARVEN, 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,

Appellant,

vs.

KELLY EPPINGER,

Respondents.

On Appeal from an Order Granting a Petition for Judicial Review
of the Eighth Judicial District Court of
the State of Nevada, in and for Clark County
District Court Case No. A-20-826310-P

APPELLANT'S APPENDIX

TROY C. JORDAN, ESQ.
Nevada State Bar No. 9073
State of Nevada, Dept. of Employment,
Training & Rehabilitation (DETR),
Employment Security Division (ESD)
500 East Third Street
Carson City, NV 89713

(775) 684-3996

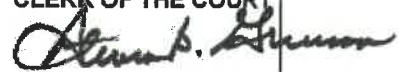
Attorney for Nevada ESD Respondents

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12/17/2020

Nevada DETR/ ESD
Office of Legal Counsel

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12/14/2020 12:02 PM
Steven D. Grierson
CLERK OF THE COURT



1 PTJR

2 Elizabeth S. Carmona, Esq.

3 Nevada State Bar No. 14687

4 NEVADA LEGAL SERVICES, INC.

5 530 South 6th Street

6 Las Vegas, Nevada 89101

7 Telephone: (702) 386-0404, ext. 128

8 Facsimile: (702) 388-1641

9 ecarmona@nlslaw.net

10 Attorney for Petitioner

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

DISTRICT COURT
CLARK COUNTY, NEVADA

11 KELLY EPPINGER,

12 Petitioner,

13 vs.

14 EMPLOYMENT SECURITY DIVISION,
15 STATE OF NEVADA and KIMBERLY GAA,
16 in her capacity as Administrator of the
17 EMPLOYMENT SECURITY DIVISION;
18 J. THOMAS SUSICH, in his capacity as
19 Chairperson of the EMPLOYMENT
SECURITY DIVISION BOARD OF REVIEW,
and LINDEN & ASSOCIATES PC,
as employer,

Respondents.

) CASE NO.

) DEPT. NO.

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PETITION FOR JUDICIAL REVIEW

The Petitioner, KELLY EPPINGER, petitions the court to review the decision of the
EMPLOYMENT SECURITY DIVISION BOARD OF REVIEW, dated December 3, 2020,
finding Petitioner ineligible for unemployment insurance 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.
4. That the decision was improper as a matter of law.

1 WHEREFORE, the Petitioner, KELLY EPPINGER, prays for the following relief:

2 1. That the decision of the EMPLOYMENT SECURITY DIVISION BOARD OF
3 REVIEW be reversed, and the Petitioner be determined to be eligible for unemployment
4 insurance benefits for which she has applied.

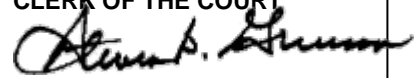
5
6 2. That this court grant such other and further relieve as may be just, equitable and
7 proper.

8 DATED this 11th day of December, 2020.

9
10 Respectfully submitted,

11
12 
13

14 Elizabeth S. Carmona, Esq.
15 Nevada State Bar No. 14687
16 **NEVADA LEGAL SERVICES, INC.**
17 530 South 6th Street
18 Las Vegas, Nevada 89101
19 Telephone: (702) 386-0404, ext. 128
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21 ecarmona@nlslaw.net
22 *Attorney for Petitioner*
23
24
25
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28



1 **ANS**
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**

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*, **LYNDA PARVEN**] in her capacity as
15 Administrator of the EMPLOYMENT
16 SECURITY DIVISION; J. THOMAS
17 SUSICH in his capacity as the Chairperson of
18 the EMPLOYMENT SECURITY DIVISION
19 BOARD OF REVIEW, and LINDEN &
20 ASSOCIATES PC, as employer,

21 Respondents.

22 **ANSWER TO PETITION FOR JUDICIAL REVIEW**

23 **COME NOW**, Respondents, State of Nevada, Department of Employment, Training and
24 Rehabilitation, Employment Security Division (ESD), Kimberly Gaa, Administrator, and J.
Thomas Susich, Chairperson of the ESD Board of Review, by and through Division Senior Legal

25 ///

26 ///

27 ///

1 Counsel, Troy C. Jordan, Esq., and hereby answer Petitioner's Petition for Judicial Review,
2 in accordance with NRS 612.530, as follows:

3 **The ESD Respondents deny the allegations of the Petition.**

4 **DATED** this 25th day of January, 2021.

5 /s/ TROY C. JORDAN
6 TROY C. JORDAN, ESQ.
7 *Attorney for Nevada ESD Respondents*
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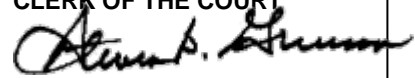
1 **CERTIFICATE OF SERVICE**

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 ANSWER TO PETITION FOR JUDICIAL REVIEW, *by either* electronic means
5 (NEFCR 9), as indicated by an email address set forth below, *and/or* by placing the same within
6 an envelope and depositing said envelope with the State of Nevada Mail for postage and mailing
7 from Carson City, Nevada, addressed for USPS 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 **DATED** this 25th day of January, 2021.

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



1 **ROA**
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**

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, LYNDA PARVEN**] in her capacity as
15 Administrator of the EMPLOYMENT
16 SECURITY DIVISION; J. THOMAS SUSICH
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 **RECORD ON APPEAL**

23 **COMES NOW**, Respondent, Administrator, State of Nevada, Department of
24 Employment, Training and Rehabilitation, Employment Security Division (ESD), by and through

25 ///

26 ///

27 ///

28 ///

counsel, Troy C. Jordan, Esq., and hereby submits the Record On Appeal, as required by NRS
612.530.

DATED this 25th day of January, 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 RECORD ON 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,
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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 25th day of January, 2021.

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

EMPLOYMENT SECURITY
DIVISION

Unemployment Insurance
Support Services



STEVE SISOLAK
Governor

ELISA CAFFERATA
Director

LYNDA PARVEN
Administrator

STATE OF NEVADA)

)

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 ESD Program Chief / UISS, I am the custodian of certain records maintained by the Division.
3. The attached is a true and correct copy of records of the Division pertaining to the following case:

Kelly Eppinger, SSN [REDACTED]

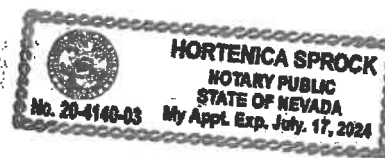
Patricia Allander

Date

ESD Program Chief / UISS

Employment Security Division

SUBSCRIBED and SWORN to
before me this 12th of January, 2021

Notary Public

12/17/2020

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Steven D. Grierson
CLERK OF THE COURT

Stuck

1 WHEREFORE, the Petitioner, KELLY EPPINGER, prays for the following relief:

2 1. That the decision of the EMPLOYMENT SECURITY DIVISION BOARD OF
3 REVIEW be reversed, and the Petitioner be determined to be eligible for unemployment
4 insurance benefits for which she has applied.

5
6 2. That this court grant such other and further relieve as may be just, equitable and
7 proper.

8 DATED this 11th day of December, 2020.

9
10 Respectfully submitted,

11
12 

13
14 Elizabeth S. Carmona, Esq.
15 Nevada State Bar No. 14687
16 **NEVADA LEGAL SERVICES, INC.**
17 530 South 6th Street
18 Las Vegas, Nevada 89101
19 Telephone: (702) 386-0404, ext. 128
20 Facsimile: (702) 388-1641
21 ecarmona@nlsllaw.net
22 *Attorney for Petitioner*
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Nevada DETR/ESD
Office of Legal Counsel

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6
7 **DISTRICT COURT**
CLARK COUNTY, NEVADA

8 KELLY EPPINGER,) CASE NO. A-20-826310-P
9) DEPT. NO. 15
Petitioner,)
10 vs.)
11 EMPLOYMENT SECURITY DIVISION,)
STATE OF NEVADA and KIMBERLY GAA,)
12 in her capacity as Administrator of the)
EMPLOYMENT SECURITY DIVISION;)
13 J. THOMAS SUSICH, in his capacity as)
Chairperson of the EMPLOYMENT)
14 SECURITY DIVISION BOARD OF REVIEW,)
and LINDEN & ASSOCIATES PC,)
15 as employer,)
Respondents.)
16

17 **SUMMONS – CIVIL**

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

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

22 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
23 on you, exclusive of the day of service, you must do the following:
24

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

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

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

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

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

14 STEVEN D. GRIERSON, CLERK OF COURT

15 By: Roby Rodriguez 12/14/2020
16 Deputy Clerk Date
17 Roby Rodriguez

18 Submitted by:

19 

20 Elizabeth S. Carmona, Esq.
21 Nevada State Bar No. 14687
22 NEVADA LEGAL SERVICES, INC.
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U.I. SUPPORT SERVICES

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8	KELLY EPPINGER,) CASE NO. A-20-826310-P
) DEPT. NO. 15
9	Petitioner,)
)
10	vs.)
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11	EMPLOYMENT SECURITY DIVISION,)
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12	in her capacity as Administrator of the)
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13	J. THOMAS SUSICH, in his capacity as)
	Chairperson of the EMPLOYMENT)
14	SECURITY DIVISION BOARD OF REVIEW,)
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15	as employer,)
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SUMMONS - CIVIL

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21 **TO RESPONDENT: KIMBERLY GAA, in her capacity as Administrator of the**
22 **Employment Security Division: A civil complaint has been filed by the Petitioner against you**
23 **for the relief set forth in the Petition.**
24

1 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
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17 By: Roby Rodriguez 12/14/2020
18 Deputy Clerk Date
19 Roby Rodriguez

20 Submitted by:

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

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U.L. SUPPORT SERVICES

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15 as employer,)
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SUMMONS – CIVIL

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20 **THE INFORMATION BELOW.**

21 **TO RESPONDENT: J. THOMAS SUSICH, in his capacity as Chairperson of the**
22 **Employment Security Division of the Board of Review: A civil complaint has been filed by**
23 **the Petitioner against you for the relief set forth in the Petition.**
24

1 1. If you intend to defend this lawsuit, within 20 days after this Summons is served
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16 STEVEN D. GRIERSON, CLERK OF COURT

17 By: Roby Rodriguez 12/14/2020
18 Deputy Clerk Date
19 Roby Rodriguez

20 Submitted by:

21 
22 Elizabeth S. Carmona, Esq.
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24 NEVADA LEGAL SERVICES, INC.
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3 *Attorney for Petitioner*

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**DISTRICT COURT
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7 **KELLY EPPINGER,**) CASE NO. A-20-826310-P
8) DEPT. NO. 15
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14 and LINDEN & ASSOCIATES PC,)
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15 Respondents.)

SUMMONS – CIVIL

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15 By: Robyn Rodriguez 12/14/2020
16 Deputy Clerk Date
17 Robyn Rodriguez

18 Submitted by:

19 

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Attorney for Petitioner

Employment Security Division
Board of Review
500 East Third Street
Carson City, NV 89713
Tel (775) 687-6820
Fax (775) 684-0466



ONE NEVADA - Growing A Skilled, Diverse Workforce



13545546
<https://www.nvdetr.org>

BOARD OF REVIEW

In the Matter of:

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

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

Date Decision is Mailed: 12/03/2020

Date Board's Decision is Final: 12/14/2020

Final Date for Appeal to Court: 12/28/2020

SSN: [REDACTED]

Appeal Rights: An appeal to the state district court of the county in which the work was performed must be filed on or before the "Final Date for Appeal to Court," as set forth above (NRS 612.525 and 612.530).

Docket Number: V-20-B-01127 (V-20-A-05761)

AFFIRMATION OF REFEREE'S DECISION:

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.

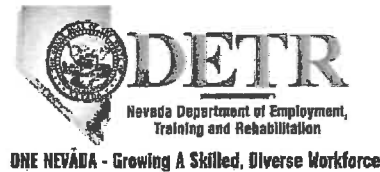
II. The Board of Review adopts the REASONS of the Appeals Referee as its REASONS.

DECISION: The decision of the Appeals Referee is affirmed in all respects; benefits are denied from December 8, 2019 onward, until the claimant has earned remuneration in covered employment equal to or exceeding the weekly benefit amount in each of ten (10) weeks, under the provisions of Section 612.380 of the Nevada Revised Statutes (Voluntary Quit).

This decision is unanimous.

BOARD OF REVIEW

/s/ J. THOMAS SUSICH, CHAIRPERSON



**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

Número de llamada gratuita....888-687-8147

Si 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.

Recipient List

LIZ CARMONA
530 SOUTH 6TH STREET
LAS VEGAS, NV 89101

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

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

Employment Security Division
Board of Review
500 East Third Street
Carson City, NV 89713
Tel (775) 687-6820
Fax (775) 684-0466



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**ACKNOWLEDGEMENT OF RECEIPT OF APPEAL, OR RESPONSE TO AN APPEAL,
TO THE BOARD OF REVIEW**

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

MAILING DATE:
October 27, 2020

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

APPEALS DOCKET NUMBER:
V-20-A-05761

BOARD OF REVIEW DOCKET NUMBER:
V-20-B-01127

CLAIMANT'S SSN:
[REDACTED]

YOU ARE RECEIVING THIS ACKNOWLEDGEMENT TO NOTIFY YOU THAT THE BOARD OF REVIEW HAS RECEIVED THE ATTACHED APPEAL OR RESPONSE TO AN APPEAL.

FURTHER INFORMATION WILL BE FORTHCOMING REGARDING THE STATUS OF THIS CASE.

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 established in the hearing, and any oral and/or written argument submitted timely to the Board in accordance with this notice.

TO ANY OTHER PARTY: If you wish to submit a response to the appellant's written 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 Employment Security Division, no later than 11 days from the mailing date of this form.

INFORMACIÓN EN ESPAÑOL

Este comunicado contiene información importante acerca de su reclamo de desempleo, incluyendo información sobre plazos de apelación. Si usted tiene problemas para leer y comprender inglés, puede comunicarse con un representante de la División para que le ayuden con la traducción.

El Norte de Nevada.....1-775-687-8148
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TO THE BOARD OF REVIEW**

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

LINDEN & ASSOCIATES PC

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October 27, 2020

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V-20-A-05761

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LAS VEGAS, NV 89135-2321

October 20, 2020

Employment Security Division
Office of Appeals
2800 East St. Louis Avenue
Las Vegas, Nevada 89104

VIA STANDARD MAIL

Re: Appeal of Decision of the Referee

RECEIVED
OCT 23 2020
SO NV ADJUDICATION #170
LAS VEGAS, NV

RECEIVED
EMP. SEC. DIV.
OCT 23 2020
LAS VEGAS
APPEALS

To Whom It May Concern:

My name is Kelly Eppinger. My social security number is [REDACTED] My claimant ID number is \$212554. I am appealing the Decision of the Referee, dated October 15, 2020, for the following reasons:

1. I testified that I secured new employment at Summit Mental Health prior to leaving my job at Linden and Associates. This testimony also correlates with my prior responses included in the record, yet, Referee Parker has seemingly chosen to cherry-pick this testimony as being not credible. Everything else I testified to was taken for fact *except* for my testimony regarding securing new employment prior to leaving Linden and Associates. Referee Parker cannot baselessly label my testimony as not credible without any support for doing so.

2. Referee Parker did not allow my Attorney to admit paystubs from Summit Mental Health into the record, which would have showed my higher rate of pay. The paystubs would have also demonstrated my year to date earnings at Summit Mental Health, which also would have helped to substantiate the timeline of events (i.e., how I secured employment at Summit Mental Health prior to leaving my job at Linden and Associates).

3. In her Decision, Referee Parker explained that I met with Dr. Linden in November 2020 to resign from my position. What Referee Parker failed to mention is that I also testified that I informed Dr. Linden that I was offered a position at Summit Mental Health, which paid more than my current position at his office, and that I requested that he give me a raise. I only resigned after Dr. Linden informed me that he could not match the higher rate of pay at Summit Mental Health. Therefore, unlike the reasoning contained in Referee Parker's Decision, I did exhaust all reasonable alternatives available to me. And, again, this testimony substantiates the fact that I secured new employment prior to leaving Linden and Associates.

For these reasons, I respectfully request that the Board of Review consider my appeal.

Thank you,

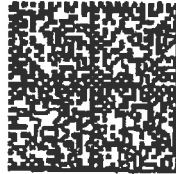

KELLY EPPINGER



NEVADA LEGAL SERVICES
INCORPORATED

LAS VEGAS OFFICE
530 S. 6TH STREET
LAS VEGAS, NV 89101

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Office of Appeals
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Las Vegas, NV 89104

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DECISION OF THE REFEREE

In the Matter of:

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

LINDEN & ASSOCIATES PC

Docket Number: V-20-A-05761

Date Decision is Mailed: 10/15/2020

Date Decision is Final: 10/26/2020

SSN: [REDACTED]

Appearances:

Attorney, Claimant

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.
(Nevada Revised Statute 612.510)

FINDINGS OF FACT: The claimant appealed from a determination denying benefits under the voluntary leaving provisions of Nevada Revised Statutes (NRS) 612.380. The parties were advised, the additional issues pursuant to NRS 612.385, whether the claimant's discharge was for reasons associated with misconduct, NRS 612.475, whether the employer met the response requirements of the law, and NRS 612.551, whether the employer's account was subject to charge would also be addressed. A hearing was held.

The claimant filed a benefit claim effective March 29, 2020. The Division issued a determination denying benefits, on July 1, 2020. The claimant filed a timely appeal.

The employer, Linden and Associates, P.C. did not respond to the Notice of Claim Filed – Separation Base Period Employer form, requesting information concerning the claimant's employment and reasons for separation.

The claimant was employed from May 15, 2019 through January 1, 2020. The claimant worked her last completed shift, on January 1, 2020, as a psychiatric technician.

The claimant reported to the Employment Security Division's Local Office, her separation was a mutual agreement, and she agreed to mutually separate opposed to continue working since she was offered another position that paid higher wages. The claimant reported to the Adjudication Division, she was switched to a "1099" employee (i.e. independent contractor), without being asked. She put out her resume and was hired. She asked the physician (i.e. Doc) if he would honor his verbal agreement of giving her a raise. The physician said he could not afford it, and if she had a better opportunity, she should take it. The claimant spoke with the physician sometime in November 2019, at the time of

giving notice of resignation about the pay raise.

The claimant also reported to the Adjudication Division, she was employed with the new employer, Summit Community Services as a "1099" employee from December 15, 2019 through March 16, 2020. The claimant reported she was hired and/or signed her employment contract with "Summit," on November 26, 2019; however, she did not receive her first client until sometime in December 2019, when questioned by this tribunal. The claimant did not have a copy of the employment contract and/or any supporting documentation, showing she secured other employment, prior to quitting.

The claimant did not recall the exact date she gave notice of resignation. The claimant held a conversation with the physician (i.e. Dr. Linden) sometime in November 2019, at which time, she gave verbal notice of her resignation. The claimant advised the physician, she was leaving for a higher paying job.

The "catalyst" (i.e. final incident) that led to the claimant's decision to quit and look for other employment was based on the fact; her full-time position was changed to a "1099" employee. The claimant was hired as a full-time employee. The claimant's employment classification was changed to a "1099" sometime in November 2019. On October 17, 2019, the claimant had a conversation with the office manager (i.e. Jennifer) via text, regarding coming into the office to sign the "1099" documents. The claimant questioned why she was being changed from full-time to a "1099" after five months of employment. The office manager responded by telling the claimant, she seemed Okay with "it" when they talked, and specifically instructed the claimant to speak with the physician (i.e. Dr. Linden) about her inquiry regarding the change. The claimant never went into the office to sign the "1099" documents. The claimant never spoke with the physician, regarding any problem she had with being changed to a "1099" and/or being "treated unfairly" relative to being changed to a "1099" employee, prior to quitting. The claimant never filed a formal complaint with the employer (i.e. human resources, office manager, and/or physician) or a state government agency, regarding any issues with being changed to a "1099" employee, prior to quitting.

The claimant provided this tribunal with supporting documentation, showing payroll received as a full-time employee through October 26, 2019, and as a "1099" employee. The claimant received her first check as a "1099" employee, on November 13, 2019.

The claimant continued working until January 1, 2020. The claimant did not provide the employer with an effective last day of work when giving notice since she did not know when her employment would end, based on the fact, she agreed to complete a project that she was already working on, as well as assist with training her replacement. The claimant received her last check dated January 3, 2020, on January 7, 2020.

REASONS FOR DECISION: 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.

When there is doubt whether a separation should be considered a quit or a discharge, it is commonly

reasoned that if the employer set in motion the chain of events leading to the separation, the separation was a discharge. If the claimant set the chain of events in motion, the separation was a voluntary leaving.

In this present case, evidence substantiates, the claimant was the moving party; whereby this tribunal finds, the voluntary quit provisions of the law apply.

NRS 612.380 provides that a person is ineligible for benefits if he has left his last or next-to-last employment without good cause, or to seek other employment, 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.

Sworn testimony need not be "assumed" to be correct simply because it is sworn testimony. To be the basis for supportable findings, the testimony must not only be sworn testimony; it must be in accord with logic and reason and meet the test of credibility.

The claimant contends, she quit after being changed from a full-time employee to an independent contractor, without her knowledge and/or signing of any documentation. The claimant testified to the fact, she received her first check as a "1099" employee, on November 13, 2019, and contends she secured other employment effective November 26, 2019. The claimant further testified to the fact, she continued working until January 1, 2020 to finish a project she was already working on, and to help train her replacement.

Evidence substantiates, there was some type of conversation between the claimant and employer, regarding the "1099" change, in October 2019, and that the claimant did not attempt to speak to the physician about her inquiries, concerning the classification change, as instructed to do so by the office manager, prior to quitting.

This tribunal finds, it is not within logic or reason, the claimant would continue working in an employment capacity and receive compensation for months, in a position she was not in agreement with, whether written or verbally expressed. Additionally, this tribunal finds, the claimant's actions of remaining employed, as a "1099" employee, even after securing other employment lacks logic and reason since the claimant maintained, the classification change was the "catalyst," which led to her decision to quit and the fundamental basis for seeking other employment.

The claimant provided no supporting evidence, substantiating she secured other employment, prior to quitting.

Based on evidence on record, this tribunal finds, the claimant quit due to personal non-compelling reasons, and prior to exhausting all reasonable alternatives available to her. Good cause for quitting has not been established.

NRS 612.475 provides that: "Upon receipt of the notice of filing a claim, the employing unit shall within 11 days after the date of mailing of the notice, submit to the Division all relevant facts which may affect a claimant's rights to benefits."

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.

Since the employer was not present during the hearing proceedings to provide testimony, the issues pursuant to NRS 612.475, whether the response requirements of the law, and NRS 612.551, whether the employer's account was subject to charge were not addressed.

DECISION: The appealed determination issued under NRS 612.380 is affirmed. The claimant is ineligible for benefits from December 8, 2019 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.

DEIRDRE PARKER
/s/ APPEALS REFEREE



**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

Número de llamada gratuita....888-687-8147

Si 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.

Recipient List

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KELLY EPPINGER:
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

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

TRANSCRIPTION OF TESTIMONY

Claimant's Name: Kelly Eppinger

SSN No.: [REDACTED]

Lower Authority Appeal Number: V-20-A-05671

Board Appeal Number: V-20-B-01127

Date of Hearing: October 14, 2020

Hearing Officer: Deirdre Parker

Date Transcript Completed: January 11, 2021

Appearances: Kelly Eppinger, Claimant
Elizabeth Carmona, Claimant Attorney

Certification

I certify that the following pages, 1 through 36,
constitute a full, true and correct transcription of the
testimony in the subject case as digitally recorded.

TheRecordXchange

Antoinette Franks

Antoinette Franks

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.

P. Allander

Patricia Allander, ESD Program Chief/UISS

1 EPPINGER: Hello.
2 PARKER: Good morning. Kelly Eppinger, please.
3 EPPINGER: Yes. This is she.
4 PARKER: This is Referee with the State of Nevada
5 Unemployment Office of Appeals.
6 EPPINGER: Good morning.
7 PARKER: Good morning. If you hold the line, we're going
8 to give your attorney, Ms. Carmona a call. One
9 moment.
10 EPPINGER: Yes, please. Thank you.
11 CARMONA: This is Liz Carmona.
12 PARKER: Good morning, Ms. Carmona. This is Referee
13 Parker with the State of Nevada Unemployment
14 Office of Appeals.
15 CARMONA: Good morning.
16 PARKER: Good morning. Let the record reflect the
17 recorder has been activated and will remain on
18 for the duration of the hearing and it's -- all
19 parties have been disconnected. Present by
20 telephone we have the Claimant, Ms. Kelly
21 Eppinger, and her legal counsel, Ms. Elizabeth
22 Carmona.
23 Are there any witnesses appearing on behalf
24 of the Claimant, Ms. Carmona?
25 CARMONA: No.
26 PARKER: All right. This hearing is being held to receive
27 information on the issues described in the notice
28 now to you. I'll go through the prehearing

1 instructions first. Once I've completed the
2 instructions, I'll place you on oath, Ms.
3 Eppinger, question you regarding the employment
4 and reasons for separation. After questioning
5 you, Ms. Carmona will have the opportunity to
6 question you.

7 You do have the right to offer evidence
8 during the hearing as well as the right to object
9 to any evidence being offered along with agency
10 documents, which I will be entering into the
11 hearing record as evidence.

12 Any questions regarding the procedures
13 explained, Ms. Carmona?

14 CARMONA: No questions.

15 EPPINGER: No.

16 PARKER: All right. And your bar number is for the
17 record?

18 CARMONA: 14687.

19 PARKER: Thank you. With that, we are officially on the
20 record in Nevada appeal case V-20-A-05761. The
21 Claimant's name is Kelly Eppinger. Last four
22 digits of the social is [REDACTED]

23 This hearing is taking place on Wednesday,
24 October 14, 2020. The time is now 9:19 a.m., in
25 the Office of the Appeals Referee of Las Vegas,
26 Nevada. The Claimant is present by telephone and
27 is being represented by legal counsel, Ms.
28 Elizabeth Carmona. The Employer, Linden and

1 Associates PC, is not present. And in looking at
2 the case notes prior to the Claimant, did not
3 contact the Appeals Office to provide a telephone
4 number and/or name for participation or to
5 request a postponement. Because this is a
6 Claimant's appeal, we will proceed with the
7 hearing as scheduled. I'm Referee Parker,
8 assigned by the state of Nevada to hear this
9 case.

10 This hearing as a result of a timely
11 Claimant appeal to a Department determination
12 issued July 1, 2020, which denied benefits to the
13 Claimant under the provisions of NRS 612.30, in
14 that, the Claimant voluntarily quit without good
15 cause. A person is ineligible to receive
16 benefits for the week in which they voluntarily
17 left their last or next-to-last employment, one,
18 without good cause and until they returned to
19 work in subsequent covered employment and earned
20 their weekly benefit amount in each of 10 weeks;
21 or two, to seek other employment until they
22 secure other employment and is subsequently
23 unemployed through no fault of their own.

24 The parties were advised that the additional
25 issues pursuant to NRS 612.35 was the Claimant's
26 discharge was for reasons associated with
27 misconduct would be addressed. Misconduct is not
28 specifically defined by statute. However, the

1 Nevada Supreme Court has ruled that the
2 Claimant's actions must contain an element of
3 wrongfulness. The employer must also
4 substantiate by a preponderance of evidence
5 willful and deliberate misconduct on the
6 Claimant's behalf in order for disqualification
7 of benefits to occur.

8 The parties were also advised that the
9 additional issues pursuant to NRS 612.475,
10 whether the Employer met the response
11 requirements of the law, and NRS 612.551, whether
12 the Employer's account was subject to charges
13 would be considered.

14 An employing unit has 10 calendar days plus
15 an additional 3 mailing days to provide all
16 relevant facts concerning the Claimant's
17 employment and reasons for separation in order to
18 receive an appealable copy of the notice of
19 determination rendered, constraining the
20 Claimant's entitlement to benefits, as well as
21 receive a ruling under NRS 612.551 as to whether
22 or not their account is subject to charges if the
23 Employer has contributed 75 percent or more of
24 the base period earnings.

25 This is your only evidentiary hearing
26 required by law on these issues, which means it's
27 your last opportunity to submit new evidence.
28 All testimony is required to be taken under oath.

1 The hearing is being recorded. And within five
2 business days from today's hearing date, you'll
3 receive a written decision by mail. Two parties
4 may appeal that decision if they disagree; the
5 Claimant as well as the Employment Security
6 Divisions Administrator. For the record, the
7 Employer, Linden and Associates Inc., PC, the
8 non-vested appellate party, pursuant to NRS
9 612.475, whereas they failed to respond to the
10 notice of claim file form. The notice of hearing
11 advised all parties that have the right to review
12 the exhibits of the appeal file on their UINV
13 customer service account.

14 And did you have the opportunity to review
15 the exhibits with your client, Ms. Carmona?

16 CARMONA: Yes.

17 PARKER: In looking at the notice of hearing letter, is
18 this still your accurate mailing address, Ms.
19 Eppinger?

20 EPPINGER: Yes.

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

27 Exhibits 1, 2, and 3 are all snapshot
28 computer printout screens from the Employment

1 Security Division's local office showing the
2 benefit claim effective date as well as the
3 Claimant's and Employer's contact and mailing
4 information.

5 Exhibit 4 is a computer printout screen
6 showing issues listed on the claim. Exhibit 5 is
7 a computer printout screen showing separations
8 listed on the claim, which contains the employers
9 reported by the Claimant during the claim filing
10 benefit year and reason for separation as well as
11 employment period.

12 Exhibit 6 is a computer printout screen of
13 the wage details showing wages reported under the
14 Claimant's social. Exhibit 7 is a computer
15 printout screen of the employer search, showing
16 the Employer's address of record.

17 Exhibit 8 through 11 is an original copy of
18 the notice of claim filed, separation date,
19 (indiscernible) form mailed by the Unemployment
20 Division, March 31, 2020, to the Employer's
21 address of record, with a due date of April 13,
22 2020, requesting information regarding the
23 employment and reasons for separation, which for
24 the record was not responded to.

25 Exhibits 12, 13, 14 is a mutual agreement
26 questionnaire completed by the Claimant online,
27 March 30, 2020, with the Division. Exhibit 15 is
28 the record of fact-finding from the Unemployment

1 Adjudication Division, showing the adjudicated
2 telephone interview with the Claimant. The
3 adjudicator's telephone contact made to the
4 Employer, leaving a voice message and 48-hour
5 advisory requesting specifics concerning the
6 Claimant's employment and separation as well as
7 the adjudicated reasoning for the termination.

8 Exhibit 16, 17 is the Claimant's mailed copy
9 of the notice of determination letter. Exhibit
10 18 is the facsimile cover sheet from the
11 Claimant, addressed to the Unemployment Division,
12 received by the Division July 9, 2020. Exhibit
13 19 is an attachment, which is a copy of the
14 Claimant's mailed notice of determination, first
15 page only. And Exhibit 20 is the Claimant's
16 typed letter of appeal with signature, dated July
17 2, 2020.

18 Do you have any questions, Ms. Carmona,
19 regarding the exhibits identified and their
20 relevancy?

21 CARMONA: No.

22 PARKER: Do you have any objection to the exhibits being
23 included into the record of the hearing as
24 evidence?

25 CARMONA: No.

26 PARKER: With that, Exhibits 1 through 20 have been
27 admitted into the hearing record.

28 (Exhibit's 1 through 20 admitted into evidence)

1 PARKER: I will note for the record that additional
2 documentation was received, October 10, 2020,
3 from counsel, Ms. Carmona. And that
4 documentation is being held in abeyance pending
5 statement of testimony and relevancy. And a
6 ruling will be made as to whether those documents
7 can and will be admitted into the hearing record
8 as evidence.

9 Ms. Eppinger, I'm going to place you under
10 oath at this time.

11 EPPINGER: Okay.
12 (Claimant, sworn)

13 PARKER: What was your hire date with Linden and
14 Associates?

15 EPPINGER: I'm not -- I think it was around May 15th. I
16 think that was the exact date, but it was
17 definitely May 2019.

18 PARKER: What was the effective separation date of the
19 employment?

20 EPPINGER: And again, I'm not sure exactly of that date. I
21 did receive my last paycheck from them, January
22 7th.

23 PARKER: Do you know what your separation date was?

24 EPPINGER: I -- no, I'm not exactly sure what my last day
25 was, because I had taken another job and I was
26 finishing up a project for Linden. They knew
27 that I was -- you know, had took another job.
28 But my last paycheck from them was January 7,

1 2020 is when I received it. The date on that
2 check was January 3rd, ending in January 3rd. It
3 didn't have a range, because it was a contracted
4 services check.

5 PARKER: And looking at Exhibit 13, this is part of the
6 questionnaire you completed online March 30,
7 2020, you --

8 EPPINGER: Yes.

9 PARKER: You gave your start date of May 15, 2019. What
10 information were you utilizing when you completed
11 the questionnaire?

12 EPPINGER: Just memory.

13 PARKER: And looking at the same exhibit, you gave your
14 last day actually worked as January 1, 2020. Do
15 you know if this is an accurate date?

16 EPPINGER: You know what? Looking at my paycheck, that
17 should be about accurate. So I did -- like I
18 said, I did receive my last check on January 7th.
19 So yeah, I believe that's accurate.

20 PARKER: And in looking at the same exhibit, you gave your
21 separation date also as January 1, 2020. Do you
22 know if this date is accurate?

23 EPPINGER: That's accurate as well. So that was my complete
24 separation from Linden and Associates.

25 PARKER: What position were you employed in at the time of
26 the separation?

27 EPPINGER: A psychiatric technician.

28 PARKER: Was this considered a full-time position with the

1 Employer?
2 EPPINGER: Yes.
3 PARKER: Did you work a set schedule with the company?
4 EPPINGER: Yes.
5 PARKER: And what was that set schedule?
6 EPPINGER: I worked Monday through Friday, 8:30 to 4, with a
7 30-minute lunch break. I did -- two days a week
8 I did work at a nursing home with a provider in
9 the morning to scribe or dictate for the
10 provider.
11 PARKER: Is that 8:30 a.m. or p.m. for the record?
12 EPPINGER: A.M.
13 PARKER: Did you have set days off?
14 EPPINGER: I did. So they were closed on the weekend. So
15 initially, before I started going to the nursing
16 home, I was off on the weekends. But I did do
17 work on the weekends with regard to doing those.
18 PARKER: Did you resign or quit your position as
19 psychiatric technician?
20 EPPINGER: I took another job. I discussed with Dr. Linden
21 that I had found another job that paid more. I
22 asked him if he --
23 PARKER: Is that a yes or no for the record?
24 EPPINGER: Yeah.
25 PARKER: Okay. Did you give notice of your resignation to
26 anyone with the Employer?
27 EPPINGER: Yes.
28 PARKER: And on what date did you provide that notice?

1 EPPINGER: I don't know the exact date that I met with Dr.
2 Linden, but I continued to work and complete
3 projects with -- for them over a month after that
4 conversation that I was going to take another
5 job.
6 PARKER: Was your notice verbal or in writing?
7 EPPINGER: Verbal.
8 PARKER: Did you give an effective last day of work?
9 EPPINGER: I did not, because I didn't know how long it
10 would take me to finish the project that I had
11 been working on, that I had agreed to finish.
12 And I also had agreed to chain -- train the girl
13 who was going to take over doing what I was doing
14 at the nursing home.
15 PARKER: And who did you give the notice to of your
16 resignation?
17 EPPINGER: Dr. Linden.
18 PARKER: What reason did you give Dr. Linden for the
19 resignation?
20 EPPINGER: Well, it was an issue with the 1099. So I had
21 been changed to 1099 after being there for five
22 months. So that was an issue. And then when I
23 was hired, you know, I was -- for Dr. Linden, I
24 assumed that -- he told me I would make more
25 money. So the initial conversation when I got
26 hired, you know, was a pretty low pay. And I was
27 willing to start, you know, somewhere, but I told
28 him if I could -- you know, if we could revisit

1 that. And he told me that, you know, let's do
2 two weeks. If you're what we're looking for, we
3 can revisit the issue as to -- with regard to
4 wages.
5 PARKER: So -- one moment. Hold your statement, please.
6 EPPINGER: So --
7 PARKER: Hold your statement, please.
8 EPPINGER: Yeah, sure.
9 PARKER: What you just described to me, is that the reason
10 you gave Dr. Linden for your resignation?
11 EPPINGER: No.
12 PARKER: My question to you was what reason did you give
13 Dr. Linden for your resignation?
14 EPPINGER: Oh. A higher paying job.
15 PARKER: Did you have another job secured before you quit?
16 EPPINGER: Yes, I did.
17 PARKER: And who was that job with?
18 EPPINGER: Summit Mental Health.
19 PARKER: The name again?
20 EPPINGER: Summit Mental Health and Community Services.
21 PARKER: Are you saying Summit, M -- U-M-M-I-T, S-U-M-M-I-
22 T?
23 EPPINGER: S-U-M-M-I-T, Summit Mental, M-E-N-T-A-L Health.
24 PARKER: On what date were you offered the position with
25 Summit Mental Health?
26 EPPINGER: I'm not exactly sure what the offer date was,
27 because I did do the interview. But I was hired
28 on November 26, 2019.

1 PARKER: Were you working both jobs at the same time?
2 EPPINGER: Yes, ma'am.
3 PARKER: Did you quit because you accepted the new
4 position or did you quit because of issues with
5 your 1099 change?
6 EPPINGER: The 1099. I only sought other employment because
7 of the 1099 issue. That was the catalyst.
8 PARKER: On what date were you changed to the 1099?
9 EPPINGER: I'm not exactly sure. What I am sure about is
10 that I received my first check that reflected
11 that I had been changed to a 1099 on the 13th of
12 November 2019.
13 PARKER: And what month and year were you changed to a
14 1099?
15 EPPINGER: November 2019. That was the first time I found
16 out. That's how I found out, because I no longer
17 received a direct deposit. I didn't get my
18 direct deposit, and I had to go pick up the
19 check. And the check said contracted services.
20 So that's how I was made aware that I had, in
21 fact, been changed.
22 PARKER: Were you ever advised prior to the first issuance
23 of the check that you were being changed to a
24 1099?
25 EPPINGER: No, ma'am.
26 PARKER: Did you ever sign any documentation agreeing to
27 be changed from a full-time employee to a 1099
28 independent contractor?

1 EPPINGER: No, ma'am.

2 PARKER: Is it your sworn testimony that you went from a
3 full-time employee to a 1099 without any
4 knowledge until you received the first check on
5 November 13, 2019?

6 EPPINGER: Yes, ma'am.

7 PARKER: And once you received the check that showed that
8 you were a independent -- a contracted service
9 employee, what did you do?

10 EPPINGER: Well, I was -- you know, I was shocked, of
11 course. And I started looking for another job.

12 PARKER: Did you ever have any conversations with anyone
13 with the Employer questioning why you were
14 changed from full-time to a 1099 contracted
15 service employee?

16 EPPINGER: I did. I texted the office manager to inquire
17 about the -- because she had -- she was the first
18 one that said anything about it. She said hey,
19 on a phone conversation, can you come in. I want
20 you to come in and change -- and sign these 1099
21 documents tomorrow. And so, I was, you know,
22 taken aback. And then the next morning, early in
23 the morning before I went into the office, I
24 texted her and asked her why they would be
25 changing me after five months. And she couldn't
26 give me an answer, and she just referred me to
27 Dr. Linden.

28 PARKER: On what date did you receive the request from the

1 office manager?

2 EPPINGER: That was October 16th is the day that she -- I

3 talked to her on the phone.

4 PARKER: Of?

5 EPPINGER: October 16, 2019.

6 PARKER: And what's the name of the office manager that

7 you're referring to?

8 EPPINGER: Jennifer Williams (phonetic).

9 PARKER: On what date did Ms. Williams contact you asking

10 that you come in to sign the 1099 forms?

11 EPPINGER: That would be October 16, 2019 as well. That was

12 the day of the phone conversation. The only

13 other exchange I had with her regarding a 1099

14 was through a text message the following day.

15 And that was it.

16 PARKER: So when I asked you earlier if you had ever been

17 asked to sign -- if you ever signed any

18 documentation agreeing to the 1099 position, your

19 answer was no. And my question was did anyone

20 with the Employer ever speak to you about being

21 changed to 1099, you said no. So did they

22 actually speak to you or no?

23 EPPINGER: Oh. I must have misunderstood. I thought you

24 were asking me if I was told that I was going to

25 be changed before I was changed, which I was not.

26 She did mention, a month prior to, you know -- on

27 October 16th is when she first brung it up. So

28 yes. Yes, she did. She did mention it. When I

1 questioned her about it, she couldn't give me an
2 answer and just referred me to Dr. Linden. So I
3 assumed it was just -- you know, I didn't sign
4 anything. So I thought it was kind of over. Dr.
5 Linden didn't mention anything as well.

6 PARKER: One moment. Did you ever go speak to Dr. Linden
7 about the request that you come in and sign the
8 1099 forms after you were referred to do so with
9 Ms. Williams?

10 EPPINGER: By the time I met with Dr. Linden, I didn't speak
11 with him about the 1099, per se, because I had
12 already been offered another job. So, you know,
13 it was already an issue at the company. Three
14 people were let go for asking about the same
15 issue with 1099s. So I didn't know if -- you
16 know, I didn't really know how to handle it. At
17 that point, it was hey, I did find another job.
18 I had already been switched to the 1099 without,
19 you know, my knowledge. And so, I mean, at that
20 point, it was like, you know, I had been treated
21 unfairly. So I mean I was doing a lot of work.
22 I was no longer receiving any overtime pay for
23 the work I was doing. It was just, you know, not
24 a good situation. And so, I was willing to work
25 with Dr. Linden. I mean I had been there for
26 five months. It was very conveniently located to
27 my house. But when I approached him, it was
28 really no -- you know, no -- he didn't try to

1 negotiate anything. And he basically suggested,
2 you know, hey, you should take this other job
3 that pays more, you know. I can't pay you that.
4 And that was, you know -- that was the talk of
5 the separation with Dr. Linden. And that talk
6 was --

7 PARKER: On what date was that conversation?

8 EPPINGER: I'm sorry?

9 PARKER: On what date was the conversation you're
10 referring to with Dr. Linden?

11 EPPINGER: I'm not exactly sure what day that was. It was
12 in November.

13 PARKER: Approximately how long was it prior to your
14 actual separation?

15 EPPINGER: Well, I didn't actually separate till January.
16 But I had had the conversation. So this had to
17 be -- it was before I signed any papers or my
18 contract with Summit Mental Health, but they had
19 offered me the position.

20 PARKER: Do you recall what date you signed the contract
21 with Summit Mental Health?

22 EPPINGER: That would have been the 26th of November 2019.

23 PARKER: If you believe you were being treated unfairly,
24 why did you continue working until January,
25 completing the project and assisting with the
26 training of your replacement?

27 EPPINGER: Integrity. I had started the project, you know.
28 I was -- I did feel I was being treated unfairly.

1 Once I did secure another job, then, you know, I
2 didn't really want to -- I don't know.
3 Basically, integrity.

4 Also, I do work in mental health in the
5 area. And, you know, I didn't want to -- I don't
6 want to burn any bridges with people that I may
7 have to work in association with later, you know,
8 down the road.

9 PARKER: When you filed the unemployment benefit claim
10 with the Unemployment Division, you reported your
11 separation in accordance with Exhibits 12 through
12 14 as a mutual agreement. Why did you report
13 that if you quit?

14 EPPINGER: Because, at the time, I didn't really realize
15 that I was quitting. It was -- I looked at it as
16 a mutual separation or a mutual agreement to
17 separate. And that's just the way I had looked
18 at it. But per, you know, unemployment, I
19 realized that, oh, yeah, yes, she did quit. So,
20 you know, I looked at it as a mutual, you know,
21 agreement to separate.

22 PARKER: What efforts did you make to resolve the issue in
23 regards to being changed from a full-time
24 employee to a 1099 before quitting?

25 EPPINGER: Well, I was waiting to talk to Dr. Linden about
26 it, but Dr. Linden -- I mean it's really hard to
27 get a meeting with Dr. Linden. He's only in the
28 office so many days out the week. I mean

1 actually only in town so many days out of the
2 week. So my initial recourse was to speak to him
3 per Jennifer Williams. And as -- I mean I
4 couldn't get in with him for, you know, two-and-
5 a-half, three weeks. So during that time
6 waiting, I mean Jennifer couldn't tell me
7 anything. I couldn't talk to doc. So, you know,
8 that was my, you know, hey, let me look for
9 another job, you know. This is kind of --
10 PARKER: Did the Employer have a human resources
11 department?
12 EPPINGER: They -- I don't -- I worked with Jennifer. So
13 there were other, you know, offices. The girl
14 who did our paperwork, yeah, she was HR. She
15 also did some other stuff. But, you know, we
16 were -- people -- myself and those who did what I
17 did were directed to any -- all of our issues
18 were directed to Jennifer. I mean there have
19 been times when, you know, a office matter, I've
20 went to doc to -- you know, about. And he would
21 refer me back to his office manager. So --
22 PARKER: Did you ever file a formal complaint with the
23 Employer before you quit in regards to the change
24 of from full-time to the 1099 contract service
25 employee?
26 EPPINGER: I did not. When I noticed that I was -- had
27 actually been changed, I didn't even think I
28 could be changed without signing any documents,

1 you know, tax documents or even a contract. So,
2 you know, I just thought hey, it was -- I didn't
3 think they were actually going to change me. And
4 like I say, there have been three employees who
5 were fired for questioning -- questions about
6 their classification as 1099. Yeah. I wasn't in
7 a position to just get fired for sure.

8 PARKER: And when were these employees allegedly fired?

9 EPPINGER: That's probably like a month before. So if -- I
10 spoke with Jen -- to Jennifer -- when she first
11 brung it up was in October. Those -- they might
12 have been fired a month before, in September
13 2019.

14 PARKER: Who were these employees that were allegedly
15 fired?

16 EPPINGER: It was three people who -- one girl was fairly
17 new. I can't remember her name. I know one guy
18 was John. I mean these people really -- you
19 know, they were there for a couple of months.
20 And but yeah, it was some issue from just office
21 calls. I heard that they were filing a lawsuit
22 because of being terminated and misclassified.

23 PARKER: Were you ever told directly by either one of
24 these three employees that they were fired for
25 allegedly questioning the change of -- to a 1099?

26 EPPINGER: Yes, John. I was told by the guy John that he
27 was questioning his classification based on his
28 employment and, you know, his type of employment,

1 what he did. And yeah, he said that hey, they
2 fired me, which is retaliation. I remember him
3 saying that, and that he was going to get a
4 lawyer.

5 PARKER: And when was this conversation with the
6 individual John that you're referring to?

7 EPPINGER: This would have to be soon after he was fired.
8 So not long after he was fired.

9 PARKER: Do you know the date?

10 EPPINGER: I don't know the exact date.

11 PARKER: Do you know the month and year?

12 EPPINGER: I'm assuming it had to be in September. So if
13 they left in September, it was in September. So
14 not -- you know, it wasn't like months after he
15 was fired.

16 PARKER: Do you know John's last name?

17 EPPINGER: I don't.

18 PARKER: Do you know the third individual's name?

19 EPPINGER: No. Like I said, these people hadn't worked
20 there that long. It was a Asian lady and -- oh,
21 I cannot remember her first name. And one other
22 girl.

23 PARKER: Did you ever file a formal complaint with the
24 state government agency in regards to the alleged
25 change from a full-time employee to a 1099
26 service contract employee before you quit?

27 EPPINGER: No.

28 PARKER: The documentation submitted October 10, 2020,

1 what's the relevancy of this documentation, Ms.
2 Carmona?

3 CARMONA: Yes. So I attached three sets of proposed
4 exhibits that were her representation. Proposed
5 Exhibit Number 1 text message and chain between
6 Jennifer Williams in our client, Ms. Eppinger,
7 regarding the 1099 classification. Proposed
8 Exhibit 2 are the --

9 PARKER: One moment. We're going to do one document at a
10 time.

11 CARMONA: Okay.

12 PARKER: The text chain, October 17, 2019, the
13 documentation, first and foremost, showing the
14 information came from the Claimant's attorney,
15 Ms. Carmona, will be marked as Exhibit 21. And
16 the text chain will be marked as Exhibit 22. And
17 then the next document is a W-2. What's the
18 relevancy of this document?

19 CARMONA: Yes. So the Proposed Exhibit 2 are W-2 and 1099
20 information from Linden and Associates. One of
21 the last pages -- the very last page on Proposed
22 Exhibit 2 is the -- one of the paychecks that my
23 client received that shows her independent
24 contractor status. The paycheck shows for
25 contract services.

26 PARKER: The W-2, for the record, is the next document.
27 Is this from the actual Employer, for the
28 record?

1 CARMONA: Yes.

2 PARKER: The W-2 2019 from Linden and Associates will be
3 marked as Exhibit 23. The 2019 1019 (sic)
4 Miscellaneous Form will be marked as Exhibit 24.
5 And then I have several checks. What is the --
6 there's one check dated -- showing a direct
7 deposit -- correction -- for a pay date of July
8 19, 2019. What's the relevancy of this direct
9 deposit earning statement?

10 CARMONA: That (indiscernible) check shows that my client
11 was a W-2 at that time for the pay period 7/6/19
12 through 7/19/19.

13 PARKER: That earning statement will be marked as Exhibit
14 25. The next document is a direct deposit
15 earning statement showing a pay date of August
16 16, 2019.

17 What's the relevancy of this document, Ms.
18 Carmona?

19 CARMONA: Same reasoning as before. I wanted to show the
20 timeline of her W-2 status. This paystub shows,
21 again, that she was a W-2 from the pay period
22 8/4/19 through 8/17/19.

23 PARKER: That document will be marked as Exhibit 26. The
24 next document I have is the copy of a check,
25 showing a pay date of October 25, 2019.

26 What's the relevancy of this check?

27 CARMONA: Same reasoning as before, timeline showing that
28 as of October 25th, my client was still

1 classified as W-2.

2 PARKER: That check and earning statement showing a pay
3 period of October 13, 2019 through October 26,
4 2019 will be marked as Exhibit 27. The next
5 document I have is a document -- it shows a -- it
6 shows at the top Linden and Associates PC, the
7 Claimant's name underneath that. And it goes 816
8 contract service other, 52 hours at 15.50,
9 11/29/19. 806 is the amount. . .

10 What's the relevancy of this document?

11 CARMONA: This was the second paystub that my client
12 received after Linden and Associates classified
13 her as an independent contractor. And again, it's
14 to show the timeline of the reclassification.

15 PARKER: Is this an actual copy of the earning statement
16 with nothing on it other than the typed
17 information?

18 CARMONA: My client can correct me if I'm wrong, but I
19 believe so.

20 EPPINGER: It was on -- the check which I deposited was
21 attached to it. And this is how they look.

22 PARKER: All right. Was the -- is this the check number
23 in the top right corner, 20373, for the record?

24 EPPINGER: I'm not sure.

25 PARKER: Was this the check date, 11/22/2019?

26 EPPINGER: Yes. That's the -- so the way that these checks
27 look, it just has like one date on it. I'm
28 assuming that may be the date that the check was

1 written. And then I would have received it on my
2 payday, which may not have been the 22nd. It
3 could have been a couple of days after.

4 PARKER: All right. And that earning statement will be
5 marked as Exhibit 28 for the record. The next
6 document I have is a earning statement via ADP,
7 Summit Community Services. It shows a pay period
8 of February. It looks like 9 of 2020 through
9 February 22, 2020.

10 What's the relevancy of this documentation?

11 CARMONA: This is a check that was provided to my client by
12 her new employer, Summit Mental Health. This
13 first page shows the total amount that she
14 received during that pay period.

15 PARKER: Is there something in the -- I show another
16 earning statement from Summit also for a pay
17 period of February 23, 2020 through March 7,
18 2020. Do you have anything in this documentation
19 that shows the signed contract date and/or offer
20 of work date?

21 CARMONA: Could you repeat that, please?

22 PARKER: The documentation submitted from Summit Mental
23 Health shows earning statements of February 23,
24 2020 through March 7, 2020, and a secondary
25 earning statement showing a pay period of
26 February 9, 2020 through February 22, 2020.
27 Because this is almost a month after the
28 employment separation date, my question is, is

1 there anything in this documentation submitted
2 showing the actual contract signature date with
3 Summit Medical and/or offer of employment?

4 CARMONA: No.

5 PARKER: The documentation -- because this does not
6 substantiate the employment on or proximate to
7 the separation date, the two earning statements
8 will be ruled as inadmissible, because your case
9 won't (indiscernible) documentation. The check
10 earning statements are over a month after the
11 separation date. So both of those earning
12 statements will be kept on record as proposed
13 exhibits and not as actual admitted evidence into
14 the hearing record.

15 The next documentation I have is entitled
16 weekly payroll report, dated March 10, 2020, and
17 a weekly payroll report, dated March 24, 2020.

18 What's the relevancy of this documentation?

19 CARMONA: The relevancy of that document shows the rate of
20 pay that Summit Mental Health offered my client.
21 During my direct examination, she will explain
22 that Summit Mental Health hired her essentially
23 for two separate projects. She was paid \$17 an
24 hour for one type of work and \$22 an hour for the
25 second type of work. And the weekly payroll
26 report shows on the bottom, where it says CSR
27 hours 34, total 748, and then BSC hours 6 at 102.
28 That effectively shows the rate of pay that

1 Summit Mental Health offered her. And it
2 establishes that the rate of pay at Summit Mental
3 Health was more than her rate of pay at Linden
4 and Associates.

5 PARKER: And the same ruling applies as to the earning
6 statement. Because this is documentation dated
7 almost a month after the employment separation,
8 your case won't stand (indiscernible). The
9 payroll reports will be ruled as inadmissible and
10 kept on the record as considered proposed
11 exhibits and not actual exhibits in the hearing
12 record.

13 Those are my questions for the Claimant. Do
14 you have any questions for her, Ms. Carmona?

15 CARMONA: Yes, I do.

16 PARKER: Okay.

17 CARMONA: So, Ms. Eppinger, is Exhibit 22 an accurate
18 depiction of the text that you sent to Jennifer
19 regarding her request that you be reclassified as
20 a 1099?

21 EPPINGER: Yeah.

22 CARMONA: Okay. Can you please explain the position you
23 were offered at Summit Mental Health and the rate
24 of pay for that position?

25 EPPINGER: I was offered a position to be -- to do BST/PSR.
26 BST is basic skills training, and PSR is
27 psychosocial training, which are rehabilitative
28 mental health services. And I -- then I can work

1 for clients.

2 CARMONA: And what was the rate of pay for both of those
3 services?

4 PARKER: BSP was \$17, and PSR was \$22 per hour.

5 CARMONA: Okay. And how does the position at Summit Mental
6 Health differ from the position at Linden?

7 EPPINGER: I'd be at -- well, one of the main differences is
8 that the job at Linden was in-office. I did
9 intakes with new patients and existing or
10 returning patients and kind of entered their
11 information into their charts or created charts.
12 Whereas, at Summit, I worked directly with
13 clients. So I provided interventions directly to
14 mental health clients based on their
15 rehabilitative plan. And that was done in the
16 community or in their home.

17 CARMONA: Okay. So would you say that's a position that
18 Summit required a higher level of skill than your
19 position at Linden?

20 PARKER: What's the relevancy of your questioning in
21 regards to the level of skill (indiscernible)
22 reason for separation (indiscernible)?

23 CARMONA: I want to establish good cause to quit. Both she
24 was offered a higher paying job and the job that
25 she was offered at Summit Mental Health required
26 a higher level of skill.

27 PARKER: I'm sorry. The line of questioning is
28 irrelevant. She indicated that she quit for a

1 higher level -- for a higher rate of pay. Any
2 other questioning?

3 CARMONA: Yes. So when you eventually met with Dr. Linden,
4 how did he react when you told him that you were
5 offered a higher paying job at Summit?

6 EPPINGER: Well, like it wasn't like -- I guess he didn't
7 seem shocked. He did just, you know, tell me
8 that he could not, you know, negotiate my current
9 level of pay. And he advised me to take the job.

10 CARMONA: At any point during your employment with Linden,
11 were you ever provided 1099 documents to sign?

12 EPPINGER: No.

13 CARMONA: Did your job responsibilities change at all after
14 you were reclassified as a 1099?

15 EPPINGER: No.

16 CARMONA: After you were reclassified, were you free to set
17 your own work schedule, including when and where
18 to work?

19 EPPINGER: No.

20 CARMONA: Were you free to hire other employees to help you
21 perform your work?

22 EPPINGER: No.

23 CARMONA: Were you responsible for providing your own tools
24 and equipment?

25 EPPINGER: No.

26 CARMONA: And what were your ultimate reasons for quitting
27 Linden and Associates?

28 EPPINGER: The 1099.

1 CARMONA: Okay. I don't have any further questions.

2 PARKER: I have redirect for you, Ms. Eppinger.

3 EPPINGER: Okay.

4 PARKER: In looking at Exhibit 22, this is the text chain
5 between yourself and who you identified as the
6 office manager, Ms. Jennifer Williams. You
7 indicated that you wanted to -- you were
8 concerned about switching your employment
9 classification to 1099 and that you weren't sure
10 why that would be changing after five months of
11 employment.

12 Ms. Williams' response to that underneath
13 says you, quote, seemed okay with it when we
14 talked, but that is a discussion that you and Dr.
15 Linden will have to have.

16 What discussion is Ms. Williams referring to
17 here?

18 EPPINGER: That, with regard to the 1099, she couldn't tell
19 me why I was being, you know, changed to 1099 and
20 said that I need to talk to doc about it.

21 PARKER: What is she referring to when she states you
22 seemed okay when it -- with it when we talked?
23 What was that conversation?

24 EPPINGER: Does she -- there was just a -- yeah. So it was
25 just a quick conversation over the telephone. We
26 were talking about something else. And then she
27 mentioned that. And I was just like uh, okay.
28 And I was concerned. I knew it was -- I'm sorry?

1 Oh.

2 PARKER: (Indiscernible) whatever conversation that is,
3 that's not coming from the Referee. I don't know
4 if that's feedback from your phone, but
5 (indiscernible).

6 EPPINGER: Oh. Oh, I'm sorry. Oh. So should I continue?

7 PARKER: Yes.

8 EPPINGER: Okay. Sorry about that. So yes. So I was taken
9 off guard. I already was aware that, you know,
10 these other people had an issue about it and had
11 been fired. And you know, it was just -- I mean
12 I was taken off guard when she said it. So I
13 just said okay. And then I thought about, you
14 know, pretty much all after I talked to her. So
15 the next morning, I texted her early in the
16 morning before I went into the office to say hey,
17 you know, what's going on. Why -- you know, and
18 that's when I asked her the question, why would
19 you be -- you know, why are you guys doing this
20 after five months.

21 And I never got an answer to that question.

22 PARKER: You never got an answer to what question?

23 EPPINGER: To the question of why they would be do --
24 switching me after five months. Not from the
25 office manager or Dr. Linden.

26 PARKER: Do you have any supporting documentation that
27 shows that you secured other employment before
28 you quit?

1 EPPINGER: No. I had spoke directly to Summit Mental Health
2 to ask them. I thought that I had my contract --
3 or my signed contract. I only had a copy of the
4 first page. And but I did contact them to ask
5 exactly when my hire date was. I did not
6 immediately start seeing -- working with clients
7 once I was hired. And this also was -- you know,
8 this particular employment was 1099 employment
9 that I had agreed to. You know, at that point, I
10 was, you know, 1099 at a job that I, you know,
11 was -- had been working at as a W-2, and they
12 offered me a higher wages. But at the time of my
13 hire with Summit Mental Health, I didn't
14 immediately start working with clients. So I --
15 it took a while for me to get paired with clients
16 without workable hours (indiscernible).
17 PARKER: What was the reason that you did not immediately
18 start working with clients?
19 EPPINGER: Yes. They hired me for BST and PSR. In mental
20 health, clients have to be prior authorized for
21 client -- I mean for the services that I provide.
22 So Summit Mental Health, at the time that they
23 hired me, did not have clients to give me to
24 start working with immediately.
25 PARKER: So when did you receive your first client with
26 Summit?
27 EPPINGER: My first client with Summit was sometime in
28 December. When I took the job, they knew that I

1 was, you know, working with, you know -- still
2 working -- doing work for Linden. But I got my
3 first client in December. I remember that. I'm
4 not sure of the exact date. I didn't have any of
5 the -- I didn't have my first paycheck from
6 Summit Mental Health or the paystub, but I also
7 did not receive it for a while because once I did
8 start working with clients and turning in my
9 hours, I hadn't been trained properly on how to
10 actually submit my hours and what was required.
11 So I didn't get a paycheck from Summit till
12 like -- I mean it was a while after I was
13 working. So then -- that was just a fiasco
14 there.

15 PARKER: Were you a 1099 employee with Summit also?

16 EPPINGER: Yes.

17 PARKER: Okay.

18 EPPINGER: And I went into that knowing that it was a 1099.
19 I signed a contract. And you know, I did 1099
20 work. So I set my own schedule. I worked with
21 clients in the community and at their home. And
22 I submitted my -- you know, my hours that I
23 worked with clients to Summit.

24 PARKER: And what month and year did you receive your
25 first check from Summit?

26 EPPINGER: You know, let me grab my (indiscernible) my -- I
27 got -- I had printed out -- because my first
28 check was a paper check from Summit Mental

1 Health. And I printed out my bank statement.
2 Summit Mental Health; their offices were, you
3 know, on limited hours due to the pandemic
4 (indiscernible). But -- no, that
5 (indiscernible). I believe I got my first
6 paycheck from Summit -- I'm not exactly sure.
7 But I do believe that it was sometime towards,
8 actually, the end of December. Again, there was
9 a issue with how I was supposed to turn in my
10 notes and documenting some hours that I hadn't
11 been told. So it really was a long time before I
12 got my first paycheck from Summit Mental Health.
13 PARKER: And that was December of what year for the
14 record?
15 EPPINGER: Oh, December 2019.
16 PARKER: All right. Those are my questions. Do you have
17 any redirect questions for the Claimant, Ms.
18 Carmona?
19 CARMONA: No.
20 PARKER: A closing statement on behalf of the Claimant,
21 Ms. Carmona?
22 CARMONA: Yes, I do.
23 PARKER: Go ahead.
24 CARMONA: Thank you. So first, it's clear today, after the
25 testimony, that Ms. Eppinger worked as an
26 employee during her entire time at Linden and
27 Associates. Her testimony demonstrates that she
28 was not an independent contractor, and that is

1 pursuant to NRS 608.0155.

2 Second, it's also clear, after today's

3 testimony, that Ms. Eppinger had good cause to

4 quit her employment. Her testimony shows that

5 she began looking for other employment due to

6 Linden's wrongful reclassification without her

7 consent. Knowing that Linden had a history of

8 illegally reclassifying employees as independent

9 contractors, Ms. Eppinger did not want to be

10 taken advantage of. So she found a higher paying

11 job. Her job at Summit Mental Health paid \$1.50

12 more for skilled training and rehabilitative

13 services and \$6.50 more for psychosocial

14 rehabilitation services.

15 Ms. Eppinger has proven her higher rate of

16 pay and also testified that the position at

17 Summit required a higher level of skill.

18 Therefore, Ms. Eppinger respectfully requests

19 that the adjudication be reversed and that

20 benefits be issued at this time. Thank you.

21 PARKER: You're welcome. All right. If that's all, the

22 hearing is adjourned and you'll receive your

23 decision by mail. Thank you both for your time.

24 CARMONA: Thank you.

25 EPPINGER: Thank you.

26 PARKER: Let the record reflect the parties have

27 disconnected and we are going off record.

28 (Recording concluded)

Employment Security Division
Office of Appeals
2800 E St Louis Ave.
Las Vegas, NV 89104
Tel (702) 486-7933
Fax (702) 486-7949



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13117297
<https://www.nvdetr.org>

NOTICE OF TELEPHONE HEARING

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

DOCKET NUMBER: V-20-A-05761
DATE MAILED: 09/30/2020
CLAIMANT'S SSN: [REDACTED]
REFEREE: DEIRDRE PARKER / ab

vs.

HEARING INSTRUCTIONS FOR ALL PARTICIPANTS.

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

PURSUANT TO NRS 612.500,
A HEARING WILL BE HELD ON:
DATE: WEDNESDAY, OCTOBER 14, 2020
TIME: 9:15 AM PDT

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 Nevada775-687-8148
Sur de Nevada702-486-2957
Línea Gratuita888-687-8147

1. AT LEAST 48 HOURS PRIOR TO THE HEARING, you must provide your telephone number to use for the hearing by emailing appeals@detr.nv.gov, calling (702) 486-7933, or faxing (702) 486-7949. If you are the EMPLOYER, provide the name of the individual that will be participating in the hearing. The Referee will contact the parties at the telephone number provided to this office.

2. All parties involved in this hearing will participate by telephone AND **MUST** be prepared to proceed at the scheduled time without interruption.

3. Notify this office at once to request an interpreter if one is needed for the hearing.

**ADVISORY: FAILURE TO COMPLY WITH
THE HEARING INSTRUCTIONS MAY
RESULT IN AN UNFAVORABLE DECISION
INCLUDING A DISMISSAL OF THE APPEAL.**

THE FOLLOWING ISSUES WILL BE CONSIDERED:

NRS 612.380: Whether the claimant voluntarily quit with good cause.
NRS 612.385: Whether the claimant's discharge was for reasons of misconduct.
NRS 612.475: Whether the employer met the response requirements of the law.
NRS 612.551: Whether the employer's account is subject to charges.

IMPORTANT:

1. Review the appeal exhibits file PRIOR to the hearing AND have the documents available as they will be used at the hearing.
For Claimants, Employers and authorized Representatives: The appeal exhibits file is available for review prior to the scheduled hearing by logging into your online account at <http://ui.nv.gov>, selecting "Appeals Information," and clicking on the Marked Appeal Packet link to view the documents. For those out of state Employers who do not have a Nevada Tax Account: The appeal exhibits file will be included with this notice.
2. To have any additional evidence considered, you **MUST** send a copy to the Referee and the opposing party at the address shown on this notice in sufficient time for receipt **PRIOR** to the hearing. Video submitted as evidence will be retained by this office and must be compatible with the State computer network which utilizes Windows Media Player and VLC Media Player.
3. Each party is entitled to be represented by an attorney, at their own expense, and entitled to request that subpoenas be issued to compel a witness to attend upon a showing of necessity. For more information about the hearing procedures, consult the *Unemployment Insurance Appeals Pamphlet* and/or the *Appeals Handbook* located online at <http://ui.nv.gov>.

Docket #V-20-A-05761

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067

AA075

Recipient List

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

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

Tel (702) 486-0350 Fax (702) 486-7987



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Middle Initial:

First Name: KELLY

Mailing Address: 10372 SPLENDOR RIDGE AVE LAS VEGAS NV 89135-2321

Primary Phone: 702-460-8481

Date of Birth: [REDACTED] **Citizen:** Y

Education: 16 - Higher Ed Four

Degree: Bachelors or Equivalent Union: N

Plaintiff Union: National Union of Public Employees (NUPE)
Filing Method: IVR (Certified)

BYB: 03/29/2020 **BYE: 03/27/2021** **Liab State: NV**

Program Code: UI

Program Code: UI
Filing Method: IVR (Certified)
Occupation 2: Mental Health and Substance Abuse Social Workers

Occupation 1: Mental Health Counselors

Occupation

h and Substance

Pension Amt Withheld: \$0.00

Beginning Date:

Ending Date:

Claim File Date: 03/30/2020
Entry Date: 08/27/2020

SECRET

NAME

BPE: 09/30/2019	Current WBA: \$397.00	MBA: \$7,023.00	Total BP Wages: \$21,070.22	High Qtr Wages: \$9,948.50
BPB: 10/01/2018				

Monetary Determinations (History):

Payment Summary (All weeks):		Pay Sts	Pay Dt	Reduction	Compensible	Offset	Distribution	Net Pay	Adj	Ovp	Ovp Amt	Ovp SCC
Unit 1 BWE: 09/19/2020	File Sts: Excess Earnings / Holiday Pay			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	N	N	\$0.00	
	File Sts: Excess Earnings / Holiday Pay			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	N	N	\$0.00	
Unit 2 BWE: 09/12/2020	File Sts: Excess Earnings / Holiday Pay			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	N	N	\$0.00	
	File Sts: Excess Earnings / Holiday Pay			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	N	N	\$0.00	
Unit 3 BWE: 09/05/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 4 BWE: 08/01/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 5 BWE: 07/25/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 6 BWE: 07/18/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 7 BWE: 07/11/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 8 BWE: 07/04/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 9 BWE: 06/27/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 10 BWE: 06/20/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 11 BWE: 06/13/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 12 BWE: 06/06/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 13 BWE: 05/30/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 14 BWE: 05/23/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 15 BWE: 05/16/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
Unit 16 BWE: 05/09/2020	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	
	File Sts: Processed			\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	Y	N	\$0.00	

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Docket #: V-20-A-05761 Page 1 of 3

Exhibit#: 1

AA077



Issues: ISSUE LIST

DMPARKER DMPARKER

SSN: [REDACTED] Claimant ID: 5212554 Name: EPPINGER, KELLY Date of Birth: [REDACTED] Search Clear

Address: 10372 SPLENDOR RIDGE AVE

City/State/Zip: LAS VEGAS NV, 89135

Phone: 702-460-8481

Claim ID

BYB

BYE

Liable State

Program

Status

Claim: 2585567 03/29/2020 03/27/2021 NV UI Open

Monetary: High WBA: 397 MBA: 7023 RBA: 7023 Paid: UI

Language: English

Issue List

[Appeal Request](#)

Issue Id	Issue Type	Resolution	Employer Name	Employer Account	Issue Eff Date	Issue End Date	Assigned To	Level	Appeal	Fact Finding Needed	Created By
4957173	Claim Exception : Independent Contractor Wage Protest		[REDACTED]		03/29/2020		GROSSMAN, CRAIG			N	BENEFITS: C-SNYDER
4352502	Quit : Quit to Enter Self Employment	Deny	LINDEN & ASSOCIATES PC		12/08/2019			Original	Y	N	CSS: KELLYGAYE1
5515213	Able and Available : Available - Did Not Look for Work	Cancel			09/13/2020			Original		N	CSS: KELLYGAYE1
5486225	Able and Available : Available - Did Not Look for Work	Cancel			09/06/2020			Original		N	CSS: KELLYGAYE1
5445679	Deductible Income : Deductible Income	Cancel			08/30/2020			Original		N	CSS: KELLYGAYE1

Create Issue Edit Issue View Issue Modify Determination End Disqualification Issue History Schedule Interview

UINV Benefits 2020-09-29 16:53:40 PRD

Docket #: V-20-A-05761

Exhibit#: 4

AA080

072



APPLY FOR BENEFITS SEPARATION LIST

DMPARKER DMPARKER

SSN: [REDACTED]

Claimant ID: 5212554

Name: BPPINGER, KELLY

Date of Birth: [REDACTED] [Search](#) [Clear](#)

Address: 10372 SPLENDOR RIDGE AVE

City/State/Zip: LAS VEGAS NV, 89135

Phone: 702-460-8481

Claim ID

BYB

BYE

Liable State

Program

Status

Claim: 2585567 03/29/2020 03/27/2021 NV UI Open

Monetary: High WBA: 397 MBA: 7023 RBA: 7023 Fund: UI

Language: English

Separations

Employer	Account	Claim Effective Date	Employer Type	Employment Start Date	Employment End Date
[REDACTED]	[REDACTED]	08/30/2020	Last	07/27/2020	08/31/2020
[REDACTED]	[REDACTED]	08/30/2020	Next to Last	07/27/2020	09/05/2020
[REDACTED]	[REDACTED]	03/29/2020	Last	12/15/2019	03/16/2020
LINDEN & ASSOCIATES PC, DBA LINDEN & ASSOCIATES PC	[REDACTED]	03/29/2020	Next to Last	05/01/2019	01/15/2020

[Job Attach](#)[Delete](#)[Edit](#)

Separation Details

Employment Type : Full Time

Gross Wages for Separating Week : 620.00

Separation Reason : Mutual agreement

Quit/Discharge Reason :

Smart Links	Base Period Employer(s)	Pending IB4 Wage Requests
Add Federal	Employer	Account
Add Military	LINDEN & ASSOCIATES PC	24970900
Request IB4 Wages		
Add Out of State		
Add Nevada Employment		
No Employer		



WAGES BENEFIT WAGE DETAIL

DMPARKER DMPARKER

Either SSN, Last Name or Employer Acct are required for any search. Use as many data elements as possible to narrow the search.

Criteria

* SSN :
(999-99-9999)* Last Name: BYE:
(MM/DD/YYYY)State: Employer Acct: Wage Type: Qtr: Year:

Benefit Wages

SSN	Last Name	First Name	Employer	Class	Qtr	Year	Wage Amount	#	Wage Type	Wage Source	State	Used By	BYE
⓪	EPPINGER	KELLY	LINDEN & ASSOCIATES PC	REG	4	2019	\$2,344.69	0	RE	Employer	NV		
⓪	EPPINGER	KELLY	LINDEN & ASSOCIATES PC	REG	3	2019	\$7,053.91	0	RE	Employer	NV	NV	03/27/2021
⓪	EPPINGER	KELLY	LINDEN & ASSOCIATES PC	REG	2	2019	\$3,277.31	0	RE	Employer	NV	NV	03/27/2021
⓪													03/27/2021
⓪													03/27/2021
⓪													
⓪													
⓪													
⓪													
⓪													

Total Records: 8

Total Wages: \$41,084.66

Benefit Wage Details

First Name	Responsible Party	Date Created	Created By	Date Modified	Modified By
KELLY	Other	01/07/2020	ESS:DCHEADLE1202	01/07/2020	ESS:DCHEADLE1202

Wage Breakdown Details

Wage Type	Amount	Wage Source	Responsible Party
Nothing found to display.			
Total Details:	\$0.00		

https://apps.detr.nv.gov/Tax/TaxEmplc;erSearch.htm

Employer Search

File Edit View Favorites Tools Help

Convert Select

Login - Oracle Access Ma... Find a Lawyer - State Bar ... Login - Oracle Access Ma...

Page Safety Tools

Good Morning DMPARKER DMPARKER Wednesday, September 30, 2020 View Open Work Items Help Contact Resources ESS Logout

EMPLOYER SEARCH

DMPARKER DMPARKER

Employer Search:

Name: Telephone Number:

FEIN: Account Number: Status:

Street: City: Zip:

Search Clear

Business Name	FEIN	Account	Status	Address	Telephone
<input type="radio"/> LINDEN & ASSOCIATES PC	73-1427063		Active	4900 RICHMOND SQ STE 102, OKLAHOMA CITY, OK 73118 (M)	405-840-1999
<input type="radio"/> LINDEN & ASSOCIATES PC	73-1427063		Active	800 N RAINBOW BLVD STE 216, LAS VEGAS, NV 89107 (A)	702-384-2238
<input type="radio"/> LINDEN & ASSOCIATES PC	73-1427063		Active	4900 RICHMOND SQUARE #102, OKLAHOMA CITY, OK 73118 (T)	
<input type="radio"/> LINDEN & ASSOCIATES PC	73-1427063		Active	1608 NW Expressway, OKLAHOMA CITY, OK 73118 (BR)	702-384-2238
<input type="radio"/> LINDEN & ASSOCIATES PC	73-1427063		Active	800 N RAINBOW STE 216, LAS VEGAS, NV 89107-1189 (A)	702-384-2238

Select

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Appeals

Benefits

Contributions

Search

Employer

Agent

Request Correspondence

Summary Information

Registration

Reporting Services

Rating

Account Profile Maint.

Report & Payment Process

Report & Payment Adjust.

Wage Records

View Wage Raw File

Collections

Field Audit

Certifications

TFA

8:42 AM

Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-0338
Tel (702) 486-7999 Fax (702) 486-7987



11186874
<http://www.nvdetr.org>

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

Employer Account No:

Re: Notice of Claim Filed
- Separation Base Period
Employer

Claimant Name: KELLY
EPPINGER

SSN: [REDACTED]

Separation Date: 01/15/2020

Date Mailed: 03/31/2020

Due Date: 04/13/2020

You are the Next to Last employer on a claim for unemployment insurance benefits UI filed by KELLY EPPINGER. The claimant provided the following reason for separation: Mutual agreement.

To determine if KELLY EPPINGER is eligible for benefits, specific information concerning the reason for separation is needed from LINDEN & ASSOCIATES PC. Please provide all relevant facts and supporting documentation regarding the separation. Attach additional pages if needed.

Maximum Potential Benefit Cost \$3,443.52 or 49.032% of all benefits paid on this claim For the Year 03/29/2020 to 03/27/2021		
Your Reported Wages Are:	QTR 4/2018	\$0.00
	QTR 1/2019	\$0.00
	QTR 2/2019	\$3,277.31
	QTR 3/2019	\$7,053.91
	TOTAL	\$10,331.22

This is your **ONLY** opportunity to protest the claimant's eligibility to receive benefits and to protect your right to appeal. Refer to the attached form for an explanation of the business' rights and responsibilities. In the event there are changes to the monetary entitlement which affect your potential charges, you may receive an additional notice.

NRS 612.475.3 in part, states the employing unit shall provide all relevant facts which may affect the claimant's right to benefits. Failure to provide requested information could affect your right to appeal the separation and you may incur charges to your account.

NRS 612.551.7 states in part, that if an employer fails to provide all relevant facts or fails to respond timely as required by NRS 612.475, which may affect the claimant's rights to benefits, the employer's record for experience rating is not entitled to be relieved of the amount for any erroneous payments made to the claimant.

Please complete the following page and return by 04/13/2020. Fax or mail your response to either of the fax numbers or mailing address shown above. Refer to the attached form for an explanation of the business' rights and responsibilities.

Restricted: NRS 612.265 limits the use of this material to unemployment compensation litigation except for specified exceptions.



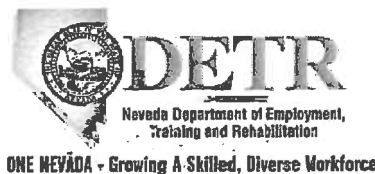
Report suspected UI Fraud online at <https://uifraud.nvdetr.org>

Docket #: V-20-A-05761
Exhibit#: 8

076

AA084

Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-0338
Tel (702) 486-7999 Fax (702) 486-7987



11186874

Employer Account

Claimant Name
KELLY EPPINGER

Due Date
04/13/2020

Employer Name

LINDEN & ASSOCIATES PC

Claimant SSN

Re: Notice of Claim Filed -
Separation Base Period Employer

EMPLOYER RESPONSE

Dates Worked: _____ **to** _____ **Hours Worked Each Week:** _____
Rate of Pay: \$ _____ **Gross Weekly Wage: \$** _____

Separation Reason: Indicate separation reason by checking appropriate box and provide details as needed.

- ☐ Lack of Work
- ☐ Temporary Layoff: Recall/Return to Work Date: _____ ☐ Still Working: Hours Per Week: _____
- ☐ Quit: If the claimant quit, explain in detail the reason given, the date of resignation and attach a copy of the resignation letter. _____

- ☐ Discharge: If the claimant was discharged, explain in detail the final incident including the date of occurrence along with details and dates of related warnings and policy violations. Attach all supporting documentation. _____

- ☐ Leave of Absence: If the claimant is on a leave of absence, explain in detail the reason and the expected return to work date. _____

- ☐ Separation Pay: Indicate if the person will receive separation pay by checking the box and filling out details below.

Type of Separation Pay	Gross Amount	Date Paid
Personal Time Off Could PTO be used for sick leave? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, do not report PTO.		
Accrued Vacation Pay		
Severance Paid		
Wages in Lieu of Notice		

Contact Person **Telephone** **Company Official Signature** **Title** **Date**

*In order to protect your rights in this eligibility decision this form must be completed, signed and returned no later than 5:00 p.m. PST on 04/13/2020. The due date is 11 calendar days from the date this form was mailed to you.
Fax or mail your response to either of the fax numbers or mailing address shown above.*



Report suspected UI Fraud online at <https://uifraud.nvdetr.org> or
call (775) 684-0475

Docket # 11186874-20-3505761

Exhibit#: 9

AA085

077

Employer Responsibilities

The Nevada Employment Security Division is required to notify an affected employer whenever a former employee (claimant) files a claim for unemployment benefits. An affected employer is the claimant's last employer, as well as his next to last employer, should the individual have less than 16 weeks employment at his last job. An affected employer is also any employer who reported earnings for the claimant during the base period of the claim.

Last & Next to Last Employers

If you are the claimant's last or next to last employer, the reason for separation from employment may affect the claimant's eligibility to receive benefits. Any separation for a reason other than a lack of work or reduction in hours must be considered in determining eligibility to receive benefits. If the claimant was separated from work for a reason other than a reduction in hours or a lay off due to lack of work, please complete the included Employer Response form and return to the address shown on the form. If the claimant quit employment from their last or next to last employing unit, solely to accept other employment, the employer may be entitled to a relief of charges against their experience rating under certain circumstances.

To protest payment of benefits, you must complete this form and submit it to the address shown on the form by our close of business (5:00 p.m. PST) on the 11th calendar day from the date the notice was mailed to you.

You must provide all relevant factual information regarding the reason for separation and sign the protest. Examples of relevant facts include, but are not limited to: Final incident-causing separation, previous warnings of complaints leading to a resignation or discharge, efforts to resolve the problems, witnesses, etc. Please attach additional sheets as needed. Failing to provide all relevant facts or fail to respond timely, which may affect the claimant's rights to benefits, your record for experience rating is not entitled to be relieved of the amount of any erroneous payments made to the claimant.

75% Contributory Employers

Nevada Law provides that any employer that paid 75% or more of the contributory wages in a base period may be relieved of charges if the individual was discharged for misconduct or resigned for reasons not constituting good cause. If you provided 75% of the base period wages and were also the last or next to last employer, you may protest both the payment of benefits as well as the levy of charges against your account. If the claimant quit employment from their last or next to last employing unit, solely to accept other employment, the employer may be entitled to a relief of charges against their experience rating under certain circumstances.

If you are identified as solely a 75% base period employer and were not the last or next to last employer, and wish to protest charges to your reserve account, you must complete this notice and submit it to the address shown on the form by our close of business (5:00 p.m. PST) on the 10th working day from the date this form was mailed to you. Failing to provide all relevant facts or fail to respond timely, which may affect the claimant's rights to benefits, your record for experience rating is not entitled to be relieved of the amount of any erroneous payments made to the claimant.

Non-75% Base Period Employers

Nevada Law provides that employers who have not provided 75% or more of base period contributory wages may protest charging of benefits only if the claimant was discharged from employment for proven crimes in connection with employment. If the claimant quit employment from their last or next to last employing unit, solely to accept other employment, the employer may be entitled to relief of charges against their experience rating under certain circumstances. Failing to provide all relevant facts or fail to respond timely, which may affect the claimant's rights to benefits, you will not be entitled to be relieved of the amount for any erroneous payments made to the claimant.

Reimbursable Employers

Nevada Law provides that employers who have elected the reimbursement method of funding unemployment benefits may protest charging of benefits only if the claimant was discharged from employment for proven crimes in connection with employment. Failing to provide all relevant facts or fail to respond timely, which may affect the claimant's rights to benefits, you will not be entitled to be relieved of the amount for any erroneous payments made to the claimant.

Proven crimes in connection with employment must be substantiated by:

- A. A conviction in a court of law,
- B. A signed, written admission of guilt;
- C. An admission under oath in a hearing of records.

In order to establish crimes in connection with the employment, you must submit proof of the claimant's actions in one of the manners shown below.

Crimes in connection with the employment are defined as:

- 1) Assault;
- 2) Arson in any degree;
- 3) Sabotage;
- 4) Grand Larceny;
- 5) Embezzlement; or
- 6) Wanton destruction of property in connection with the employment

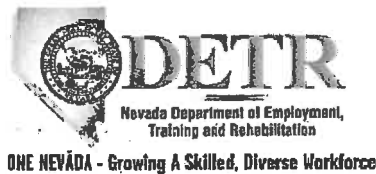
If you are protesting charging of benefits based on crimes in connection with the employment, you must submit this form and the required proof to the address shown on the form.

Privacy Act

NRS 612.265 provides that information received by this division is confidential. Any claimant or his legal representative is entitled to receive information from the records of this division to the extent necessary for the proper presentation of his claim. Information from the records of this division may be released to requesting agencies under provision set forth under NRS 612.265.

Any protest requires the signature of a responsible company official or agent per NAC 612.160.

Employment Security Division
 Adjudication Unit
 500 E Third St
 Carson City, NV 89713
 Phone: (775) 684-0302 Fax: (775) 684-0338



Claimant Name: KELLY EPPINGER
Claimant Party ID: 5212554
Issue ID: 4352502

Employer Name: LINDEN & ASSOCIATES PC
Employer Party ID: 4201135

Fact Finding Questions	Responses	
What is the name of this employer?	LINDEN & ASSOCIATES PC	03/30/2020 CSS:KELLYGAYE1
What is the contact number for this employer?	702-384-2238	03/30/2020 CSS:KELLYGAYE1
What shift would you normally work for this employer?	Day	03/30/2020 CSS:KELLYGAYE1
Monday:	No	03/30/2020 CSS:KELLYGAYE1
Tuesday:	No	03/30/2020 CSS:KELLYGAYE1
Wednesday:	No	03/30/2020 CSS:KELLYGAYE1
Thursday:	No	03/30/2020 CSS:KELLYGAYE1
Friday:	No	03/30/2020 CSS:KELLYGAYE1
Saturday:	No	03/30/2020 CSS:KELLYGAYE1
Sunday:	Yes	03/30/2020 CSS:KELLYGAYE1
Various days:	No	03/30/2020 CSS:KELLYGAYE1
How many hours would you normally work per week for this employer?	40.0	03/30/2020 CSS:KELLYGAYE1
What was your rate of pay?	15.5	03/30/2020 CSS:KELLYGAYE1
per	Hour	03/30/2020 CSS:KELLYGAYE1

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What was your start date with this employer?	05/15/2019	03/30/2020 CSS:KELLYGAYE1
If unknown, check this box:	No	03/30/2020 CSS:KELLYGAYE1
What was the last day you actually worked?	01/01/2020	03/30/2020 CSS:KELLYGAYE1
If unknown, check this box:	No	03/30/2020 CSS:KELLYGAYE1
What was your position or title?	Psychiatric Technician	03/30/2020 CSS:KELLYGAYE1
What were your job duties?	Patient intake, nursing home scribe.	03/30/2020 CSS:KELLYGAYE1
What was the date of your separation?	01/01/2020	03/30/2020 CSS:KELLYGAYE1
If unknown, check this box:	No	03/30/2020 CSS:KELLYGAYE1
Who did you discuss your separation with?	Dr. Linden	03/30/2020 CSS:KELLYGAYE1
What is this person's title or position?	Owner	03/30/2020 CSS:KELLYGAYE1
What is the contact number for this person?	702-384-2238	03/30/2020 CSS:KELLYGAYE1
Did you sign a mutual separation agreement?	No	03/30/2020 CSS:KELLYGAYE1
Could you have continued working for the employer had you not agreed to the mutual separation?	Yes	03/30/2020 CSS:KELLYGAYE1
Why did you agree to be mutually separated instead of continuing to work for the employer?	I was offered another position that paid higher wages.	03/30/2020 CSS:KELLYGAYE1

Advisement: Please fax a copy of the mutual agreement you signed to (775) 684-0338 in Northern Nevada or (702) 486-7987 in Southern Nevada.

Was there an incident that occurred that led to the mutual agreement to separate? | No

| 03/30/2020
| CSS:KELLYGAYE1

By submitting this form, you confirm these are your own answers to the best of your knowledge.

Restricted: NRS 612.265 limits the use of this material to unemployment compensation litigation except for specified exceptions.

Adjudicator Reasoning: (IWF:JIMORTON @ 06/30/2020 11:29 AM)

VQDQ - Effective 12/08/19 - LINDEN & ASSOCIATES PC/claimant provided proof she became IC within organization/went from covered employment to uncovered/denied.

Employer: (IWF:PCFLORES @ 06/02/2020 6:49 PM) LINDEN & ASSOCIATES PC, General VM, 405-840-1999, 48 Hour Advisory

Called employer rep for separation information transferred to general VM, message left requesting a response within 48 business hours by faxing employer notice and/or rebuttal to 775-684-0338.-----This is Pablo with the Department of Employment, Training and Rehabilitation. I am calling regarding the separation of EPPINGER, KELLY; SSN: [REDACTED] Please provide the details. Need dates of employment, reason for separation, final incident causing the separation, and the date it occurred. Were there any prior related warnings, if so, need the details and dates of the warnings. Policy violated and copy of the signed acknowledgement of such policies. Was there any separation pay, vacation, severance or wages in lieu paid to the claimant following the separation, if so need to know the type of pay, gross amount and date paid. Please provide this information within 48 hours, or you may go to your Employer Self Service account at UI. NV.GOV and respond to the Employer Response and Dynamic Fact-Finding that was provided electronically to you. (Rebuttal) The claimant reports that she removed from being a regular employee to be a 1099 employee, so we need to know if this is correct, and if so the date that this happened, and the reason why this was done.

Claimant: (IWF:JIMORTON @ 05/28/2020 2:31 PM) KELLY EPPINGER, 702-460-8481, Filing Advisory

Claimant reports she was working as Summit Community Services was 1099 employee from 12/15/19 to 03/16/20. Claimant true LAST ER is Linden & Associates PC covered employment 05/01/19 in November of 2019. Claimant was switched to a 1099 employee without being asked. Who is your manager? Jennifer. She said to DOC. He is the Owner. Did you talk to Doc? He never said anything about it. I put out your resume was hired, asked the DOC if he would honor his verbal agreement of me getting raise. He said he couldn't afford it, and if I had better opportunity I should take it. What is your job title? Qualified Mental Health Associate. Claimant sending in both tax form W-2 for 2019 and 1099 Misc form.

Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-0338
Tel (702) 486-7999 Fax (702) 486-7987



12382802
<http://www.nvdetr.org>

Original

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

RE: LINDEN & ASSOCIATES
PC
Claimant ID: 5212554
Issue ID: 4352502
Week End Date: 04/04/2020
Date Mailed: 07/01/2020
Last Day to Appeal: 07/13/2020
Decision Date: 06/30/2020

*** See back of form for Appeal Rights
and other important information.**

***Vea el reverso de la hoja para
los derechos de apelación y otra
información importante.**

DECISION

You are not entitled to benefits effective 12/08/2019 until you return to work in covered employment and earn at least \$397.00 in each of 10 weeks. (Proof of earnings must be furnished to end this disqualification period.)

As a result of your disqualification, you may have been overpaid Unemployment Insurance benefits. If you have been overpaid, you will be issued a separate determination that will show the amount overpaid.

REASON FOR DECISION

You quit this employment to enter self-employment. You report you were a regular employee and became Independent Contractor as of 12/15/2019. Your employer did not provide requested information regarding your reason for quitting. You provided supporting documentation to show you are a Independent Contractor.

As you have not established a compelling reason for quitting available work, good cause has not been shown.

Pertinent Section of 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.

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Report suspected UI Fraud online at <https://uifraud.nvdetr.org>

Docket #: V-20-A-05761
Exhibit#: 16

AA092

084

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 you disagree with this decision you have the right to file an appeal. The appeal must be faxed or postmarked by 07/13/2020. You may request an appeal date extension, if you did not file your appeal timely, however, you must show good cause for the delay in filing. You may appeal by writing a letter to the address shown at the top of the previous page. This appeal must include your reason for appealing, the employer name, your social security number and your signature. If an interpreter is needed, please include this request in the appeal letter. During the appeal process you must continue to file claims for any week you are unemployed to preserve any benefit rights that may be established as a result of the appeal. If your employer files an appeal, you should participate in the hearing to protect your rights. If you need additional information, please contact the telephone claims office.

An equal opportunity employer/program.

Auxiliary aids and services available upon request for individuals with disabilities

TTY (775) 687-5353 Relay 711 or (800) 326-6868

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 al para asistencia en traducción.

El Norte de Nevada.....1-775-687-8148

El Sur de Nevada.....1-702-486-2957

Numero de llamada gratuita...1-888-687-8147

Si la decisión establece que usted has sido descalificado para los beneficios de desempleo, usted tiene el derecho de apelar esta decisión presentando una apelación dentro de once días con el División de Seguridad de Empleo. La fecha límite de apelación está anotada en la parte superior de la carta de decisión. Si usted no presenta una apelación a tiempo, puede perder la oportunidad de recibir los beneficios de desempleo. Si se determina que usted no tiene derecho a recibir los beneficios de desempleo, usted puede ser responsable de devolver los beneficios que haya recibido previamente.

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From:

07/09/2020 14:22 #725 P.001/003

07/07/2020 4:13 PM FAX

fax

@0001/0003

RECEIVED
EMP SEC DIV
JUL - 7 2020
LAS VEGAS
APPEALS

TO:	DETR	FROM:	Emily Springer
ATTN:	702-884-0238	PAGES:	3
PHONE:	702-884-0238	DATE:	7/2/2020
CC:	Agreed	CD:	
<input type="checkbox"/> Urgent	<input type="checkbox"/> Review	<input type="checkbox"/> Please Comment	<input type="checkbox"/> Please Reply
<input type="checkbox"/> Please Reply	<input type="checkbox"/> Please Reply	<input type="checkbox"/> Please Reply	<input type="checkbox"/> Please Reply

07/07/2020 16:12

No.: R624 L1

P.001/003

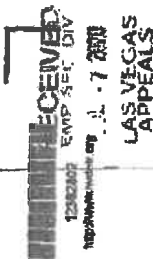
Docket #: V-20-A-05761
Exhibit#: 18

07/07/2020 4:13 PM FAX

Employment Security Division
Adjudication Center
200 East Third Street
Carson City, NV 89703-4005
Tel (775) 444-0000 Fax (775) 444-4333
Toll (800) 456-7898 Fax (703) 464-7897



0002/0003



LAS VEGAS
APPEALS

Original

KELLY SPRINGER
10372 SUNDOR ROGEE AVE
LAS VEGAS, NV 89135-2321

REILLY & ASSOCIATES
PC
Claimant ID: 6212554
Issue ID: 4322553
Week End Date: 04/04/2020
Data Mailbox: 07/01/2020
Last Day to Appeal: 07/13/2020
Decision Date: 06/27/2020

* See back of form for Appeal Rights and other important information.
* Una al reverse de la hoja para los derechos de apelación y otra información importante.

DECISION

You are not entitled to benefits effective 12/06/2019 until you return to work in covered employment and earn at least \$397.00 in each of 10 weeks. (Proof of earnings must be furnished to end the disqualification period.)
As a result of your disqualification, you may have been overpaid Unemployment Insurance benefits. If you have been overpaid, you will be issued a separate determination that will show the amount overpaid.

REASON FOR DECISION

You quit this employment to enter self-employment. You report you were a regular employee and became Independent Contractor as of 12/15/2019. Your employer did not provide requested information regarding your reason for quitting. You provided supporting documentation to show you are a Independent Contractor.

As you have not established a compelling reason for quitting available work, good cause has not been shown.

Relevant Section of Law

NRS 612.390: 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.

LE

Report to be posted in Fraud online at https://fraud.nv.gov

US77545610

07/07/2020 16:12

No.: R524 L1

P.002/003

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Restricted: NRS 612.265 limits the use of this material to unemployment compensation litigation except for specified exceptions.

From:

726 P.003/003

07/08/2020 14:23

07/07/2020 4:14 PM FAX

00003/0003

Kelly Eppinger
10572 Spindrift Ridge Ave.
Las Vegas, NV, 89135
July 2, 2020

SENT VIA FAX

State of Nevada
Department of Employment, Training & Rehabilitation (DETR)
500 East Third Street
Carson City, NV 89711

re: Kelly Eppinger
Issue ID: 4352502
SSN: [REDACTED]
Claimant ID: 3112554

To Whom It May Concern:

This letter will serve as my appeal of the above referenced determination. I request that the determination be reversed.

The determination states: You quit this employment to enter self-employment. This statement is untrue. The company changed my classification from W-2 employee to 1099 independent contractor roughly five months into my employment. I did not sign a contract or any tax documents for 1099. I spoke with June Moron (Adjudicator) on May 28, 2020 and on the same day I provided her with my tax documents, both the W-2 and 1099 from Linden and Astroblette. The W-2 wages are significantly more than the wages earned on 1099.

I am requesting that the determination be reassessed and reversed because I did not quit my employment to enter self-employment. I was unlawfully forced to enter self-employment by the company. For the entire time that I worked for Linden and Associates I was under the direct supervision of management. I never in and left when I was told to. I took my lunch and breaks at the time set forth by management and I reported to other facilities when directed to do so by management. Unfortunately, this company has had problems mistreating employees as independent contractors and have also filed legal actions against them because of it.

Sincerely,



07/07/2020 16:13

No.: R524 L1

P.003/003

Docket #: V-20-A-05761
Exhibit#: 20



LAS VEGAS OFFICE

530 South 6th Street
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Toll Free: (866) 432-0404
Fax: (702) 388-1641

RENO OFFICE

204 Marsh Avenue, Suite 101
Reno, Nevada 89309
Phone: (775) 284-3491
Toll Free: (800) 323-8666
Fax: (775) 284-3497

CARSON CITY OFFICE

209 North Pratt Avenue
Carson City, Nevada 89701
Phone: (775) 883-0404
Fax: (775) 461-7237

YERINGTON OFFICE

720 Main Street, Unit A
Yerington, Nevada 89447
Phone: (775) 463-1222
Fax: (775) 463-1212

ELKO OFFICE

285 10th Street
Elko, Nevada 89801
Phone: (775) 753-5880
Fax: (775) 753-5890

ADMINISTRATIVE OFFICE

701 East Bridger Avenue, Suite
700
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Fax: (702) 388-1641

October 8, 2020

Employment Security Division
Office of Appeals
2800 East St. Louis Avenue
Las Vegas, Nevada 89104

VIA EMAIL at appeals@detr.nv.gov

Re: Notice of Representation

Claimant: Kelly Eppinger

Docket Number: V-20-A-05761

Claimant's SSN: [REDACTED]

Referee: Deirdre Parker

Date of Hearing: October 14, 2020

Time of Hearing: 9:15 a.m.

Dear Office of Appeals:

Please take notice that I, Elizabeth S. Carmona, Esq., Nevada Bar No. 14687, am representing Kelly Eppinger at her hearing before Referee Deirdre Parker on October 14, 2020 at 9:15 a.m.

Ms. Eppinger requests that she be called for the hearing at (702) 460-8481. Please also have Ms. Parker call me for the hearing at (702) 445-4259.

Please also find the enclosed documents that may be introduced into evidence.

If you have any questions or concerns regarding this matter, please feel free to contact me at (702) 445-4259, or at ecarmona@njlslaw.net.

Sincerely,
NEVADA LEGAL SERVICES, INC.

Elizabeth S. Carmona, Esq.

Enclosures

RECEIVED
EMP. SEC. DIV

OCT 10 2020

LAS VEGAS
APPEALS

RECEIVED
NRS 612.263
THIS MATERIAL TO BE
FOR INFORMATION
ONLY
21

V-20-A-05761

089



94% 10:44 AM

Jennifer



Thursday, October 17, 2019

Good Morning Jen. I wanted to see what time u wanted me to come in today. Also, I'm concerned about the switching of employment classification to 1099. Not sure why that would be changing after I've been there 5 months.

7:37 AM

You seemed ok with it when we talked. But that is a discussion that you and Dr. Linden will have to have.

7:38 AM

If you could be at the office by 9. Also how are u doing on your notes for the Nursing homes?

7:39 AM

I was mostly taken off guard when said it. The notes are 3 weeks out.

7:40 AM

Oh, ok. But please talk with Doc.

Employee's social security number [REDACTED]		Safe, accurate, FAST! Use IRS e-file		Visit the IRS website at www.irs.gov/efile	
b Employer identification number (EIN) 73-1427063		1 Wages, tips, other compensation 12675.91		2 Federal income tax withheld 1211.00	
c Employer's name, address, and ZIP code LINDEN AND ASSOCIATES LINDEN & ASSOCIATES, P.C. 4900 RICHMOND SQ STE 102 OKLAHOMA CITY OK 73118-2042		3 Social security wages 12675.91		4 Social security tax withheld 785.91	
		5 Medicare wages and tips 12675.91		6 Medicare tax withheld 183.80	
		7 Social security tips		8 Allocated tips	
		9		10 Dependent care benefits	
d Control number		11 Nonqualified plans		12a See instructions for box 12	
e Employee's name, address, and ZIP code KELLY G EPPINGER 10372 SPLENDOR RIDGE AVE LAS VEGAS NV 89135		13 <input type="checkbox"/> Statutory employee <input type="checkbox"/> Seasonal employee <input type="checkbox"/> Full-time part-time		12b	
		14 Other		12c	
				12d	
15 State Employer's state ID number		16 State wages, tips, etc.		17 State income tax	
		18 Local wages, tips, etc.		19 Local income tax	
				20 Locality name	

Form **W-2** Wage and Tax
Statement

2019

Department of the Treasury—Internal Revenue Service

Copy B—To Be Filed With Employee's FEDERAL Tax Return.
This information is being furnished to the Internal Revenue Service.

LW2B

5202

RESTRICTED
NRS 612.265 UNLESS THE USE OF
THIS MATERIAL TO UNEMPLOYMENT
COMPENSATION LITIGATION CASE
FOR SPECIFIED REASONS
IDENTITY **V-20-A-05761**
CASE NO. **093**

AA101

☐ CORRECTED (if checked)

PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. LINDEN AND ASSOCIATES 4900 RICHMOND SQ STE 102 OKLAHOMA CITY, OK 73118-2042 US Phone: 405-824-3300		1 Rents \$ 0.00	OMB No. 1545-0115 2019	Miscellaneous Income
		2 Royalties \$ 0.00	Form 1099-MISC	
PAYER'S TIN 73-1427063	RECIPIENT'S TIN XXX-XX	3 Other income \$ 0.00	4 Federal income tax withheld \$ 0.00	Copy 2 To be filed with recipient's state income tax return, when required.
RECIPIENT'S name, street address (including apt. no.), city or town, state or province, country, and ZIP or foreign postal code KELLY EPPINGER 10372 SPLENDOR RIDGE AVE LAS VEGAS, NV 89135 US		5 Fishing boat proceeds \$ 0.00	6 Medical and health care payments \$ 0.00	
		7 Nonemployee compensation \$ 2,689.25	8 Substitute payments in lieu of dividends or interest \$ 0.00	
		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/> \$ 0.00	10 Crop insurance proceeds \$ 0.00	
Account number (see instructions) [REDACTED]	FATCA filing requirement <input type="checkbox"/>	11 \$ 0.00	12 \$ 0.00	
15a Section 408A deferrals \$ 0.00	15b Section 408A income \$ 0.00	13 Excess golden parachute payments \$ 0.00	14 Gross proceeds paid to an attorney \$ 0.00	
		16 State tax withheld \$	17 State/Payer's state no. \$	18 State income \$

Form 1099-MISC

www.irs.gov/Form1099-MISC

Department of the Treasury - Internal Revenue Service

RESTRICTED
NRS 612.265 LIMITS THE USE OF
THIS MATERIAL TO UNEMPLOYMENT
COMPENSATION LITIGATION EXCEPT
FOR SPECIFIED EXCEPTIONS
DOUBT -
CASE NO. **20-A-05761**

LINDEN & ASSOCIATES, P.C.
 4900 RICHMOND SQUARE
 SUITE 102
 OKLAHOMA CITY, OK 73118

Kelly G Eppinger
 10372 Splendor Ridge Ave
 Las Vegas, NV 89135

Direct Deposit

Employee Pay Stub		Check number: DD1847		Pay Period: 07/05/2019 - 07/19/2019		Pay Date: 07/19/2019	
Employee		SSN		Status (Fed/State)		Allowances/Extra	
Kelly G Eppinger 10372 Splendor Ridge Ave. Las Vegas NV 89135				Single/None		Fed-0/0NV-0/0	
Earnings and Hours		Qty	Rate	Current	YTD Amount	Direct Deposit	
Hourly Wage		57.02	15.55	1,038.81	4,728.89	Checking *****	
Taxes				Current	YTD Amount	Memo	
Medicare Employee Addl Tax				0.00	0.00	Direct Deposit	
Federal Withholding				-100.00	-432.00		
Social Security Employee				-84.41	-283.19		
Medicare Employee				-15.06	-88.57		
				-179.47	-703.76		
Net Pay				859.34	3,835.13		

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

25
 V-20-A-05761

LINDEN & ASSOCIATES, P.C.
 4900 RICHMOND SQUARE
 SUITE 102
 OKLAHOMA CITY, OK 73118

Kelly G Eppinger
 10372 Splendor Ridge Ave
 Las Vegas, NV 89135

Direct Deposit

Employee Pay Stub		Check number: DD1872		Pay Period: 08/04/2018 - 08/17/2018		Pay Date: 08/16/2018	
Employee		SSN		Status (Fed/State)		Allowances/Extra	
Kelly G Eppinger, 10372 Splendor Ridge Ave, Las Vegas, NV 89135				Single/(none)		Fed-0/NV-0/0	
Earnings and Hours		Qty	Rate	Current	YTD Amount	Direct Deposit	Amount
Hourly Wage		33.40	15.50	517.70	6,540.84	Checking - [REDACTED]	441.10
Taxes				Current	YTD Amount	Memo	
Medicare Employee Addl Tax				0.00	0.00	Direct Deposit	
Federal Withholding				-37.00	-589.50		
Social Security Employee				-32.10	-405.53		
Medicare Employee				-7.80	-94.84		
				-76.90	-1,089.37		
Net Pay				441.10	5,441.47		

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 THIS MATERIAL TO UNEMPLOYMENT
 COMPENSATION LITIGATION EXCEPT
 FOR SPECIFIED EXCEPTIONS
 EXHIBIT
 CASE NO. V-20-A-05761

CASH ONLY - ALL OTHERS SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Linden & Associates, PC
4900 Richmond Square #102
Oklahoma City, OK 73118
405-840-1899

Bank of the West
288 W Sahara
Las Vegas, NV 89146
90-7871211

20320

10/25/2019

PAY TO THE ORDER OF **ADVICE OF DEPOSIT - NON-NEGOTIABLE**

\$ *****

DOLLARS

Kelly G Eppinger
10372 Splendor Ridge Ave
Las Vegas, NV 89135

NON-NEGOTIABLE

MEMO

Pay Period: 10/13/2019 - 10/26/2019 Direct Deposit

Linden & Associates, PC

20320

Employee
Kelly G Eppinger

SSN [REDACTED] Status (Fed/State)
Single(none)
Pay Period: 10/13/2019 - 10/26/2019

Allowances/Etds
Fed-00/NV-00
Pay Date: 10/25/2019

Earnings and Hours	Hours	Rate	Current	YTD Amount
Hourly Wage	63.77	15.50	988.44	12,389.66
Hourly Overtime			0.00	116.25
	63.77		988.44	12,505.91

Taxes	Current	YTD Amount
Medicare Employee Add Tax	0.00	
Federal Withholding	-94.00	-1,211.00
Social Security Employee	-61.29	-785.91
Medicare Employee	-14.33	-183.80
	-169.62	-2,180.71

Net Pay 618.82 10,495.20

Direct Deposit
Checking - [REDACTED] Amount 618.82

Memo
Direct Deposit

LINDEN & ASSOCIATES, P.C., UNDEN AND ASSOCIATES

Powered by Intuit Payroll

RESTRICTED
RRS 612.265 LIMITS THE USE OF
THIS MATERIAL TO UNEMPLOYMENT
COMPENSATION LITIGATION EXCEPT
FOR THE ILD EXCEPTIONS

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AA105

Linden & Associates, PC

20373

Kelly Eppinger

11/22/2019

816 CONTRACT SERVICES-OTHER 52 hrs @ \$15.50

806.00

Bank Of The West

Contract Pay Ending 11/22/2019

806.00

RESTRICTED
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THIS MATERIAL TO UNEMPLOYMENT
COMPENSATION LITIGATION EXCEPT
AS PROVIDED EXCEPT

V-20-A-05761

098

AA106

PROPOSED EXHIBITS

V-D-A-05741

The following documents are being stored with the physical copy of the file at the appeals office.

Company Code: RS72V3 24422521
Loc/Dept: 01/2
Number: 1624269
Page: 1 of 1
Summit Community Services LLC
2810 W Charleston Blvd Ste 77
Las Vegas, NV 89102-1610

Earnings Statement



Period Start: 02/05/2020
Period End: 02/22/2020
Pay Date: 03/10/2020

Available Marital Status:
Exemptions/Allowances:
Federal: 0
State: 0
Local: 0
Total: 0
Tax Code: XXX-XX-XXXX

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

Earnings	rate	hours	units	this period	year to date
Wage			1.00	850.00	850.00

Gross Pay: 850.00

Net Pay: 850.00

Deposits	account number	trans/ABA	amount
XXXXXX	XXXXXX	XXXXXX	850.00

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TEAR HERE

VERIFY DEPOSIT... IF AUTHORITY... SCHEDULED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

Summit Community Services LLC
2810 W Charleston Blvd Ste 77
Las Vegas, NV 89102-1610

Pay Date: 03/10/2020

Deposited to the account: Checking Direct Deposit

account number	trans/ABA	amount
XXXXXX	XXXXXX	850.00

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

RESTRICTED
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COMPENSATION LITIGATION
FOR SPECIFIED EXCEPTIONS
EXHIBIT
CASE NO. 17-20-A-0576

00511
Company Code
R572V3 24422521
Summit Community Services LLC
2810 W Charleston Blvd Ste 77
Las Vegas, NV 89102-1910

Loc/Dept
01/2
Number Page
1683389 1 of 1

Earnings Statement



Period Starting: 02/23/2020
Period Ending: 03/07/2020
Pay Date: 03/24/2020

Taxable Marital Status:
Exemptions/Allowances:
Federal: 0
State: 0
Local: 0
Social Security Number: XXX-XX-XXXX

Tax Override:
Federal:
State:
Local:

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

Earnings	rate	hours/units	this period	year to date
1099 Misc		0.00	654.00	4158.00
Gross Pay			\$654.00	\$0.00
Net Pay			\$654.00	

Deposits	transit/ABA	amount
account number: XXXX	XXXXXXX	654.00

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TEAR HERE

VERIFY DOCUMENT AUTHENTICITY - COLORED AREA MUST CHANGE IN TONE GRADUALLY AND EVENLY FROM DARK AT TOP TO LIGHTER AT BOTTOM

Summit Community Services LLC
2810 W Charleston Blvd Ste 77
Las Vegas, NV 89102-1910

Pay Date: 03/24/2020

Deposited to the account	account number	transit/ABA	amount
Checking Direct Deposit	XXXX	XXXXXXX	654.00

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

RESTRICTED
NRS 612.265 LIMITS THE USE OF
THIS MATERIAL TO UNEMPLOYMENT
COMPENSATION LITIGATION
FOR SPECIFIED EXCEPTIONS
EXHIBIT
CASE NO. 20-A-0578

AA109

101



W. J. & C. Co., Inc. Ltd. Hqs. & Co.

Weekly Payroll Report

Employee: Kelly Eppinger

Date: 3/10/20

Month: _____

Week of: 2/9-3/22

Client	BST	(hours)	PSR
	1		4
			2
			6
			3
			2
	3		4
			2
			5
			2

PSR hrs: 31 Total: \$ 748
BST hrs: 6 Total: \$ 102

Employee Hours: _____ Total: \$ _____
Check Amount: \$ 850

RESTRICTED
NR 517.265 LIMITS THE USE OF
THIS MATERIAL TO UNEMPLOYMENT
COST REACTION LITIGATION EXCEPT
AS SET FORTH IN EXCEPTIONS

V-20 A-03 761

102

AA110



Employee: Kelly Eppinger Date: 3/21/20
Month: _____ Week of: _____

Client	BS*	(hours)	PSR
	2		4
	1		2
	7		8
	1		2

PSR hrs: 24 Total: \$ 352
BST hrs: 4 Total: \$ 102

Employee Hours: _____ Total: \$ _____
Check Amount: \$ 1054

RESTRICTED
 NY 012-265 LIMITS THE USE OF
 THE MATERIAL TO ONE-
 COMMUNICATION LITIGATION
 (EXCEPT FOR) EXCEPTIONS
 EX-12

103

-AA111-



LAS VEGAS OFFICE

530 South 6th Street
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Toll Free: (866) 432-0404
Fax: (702) 388-1641

RENO OFFICE

204 Marsh Avenue, Suite 101
Reno, Nevada 89509
Phone: (775) 284-3491
Toll Free: (800) 321-8666
Fax: (775) 284-3497

CARSON CITY OFFICE

209 North Pratt Avenue
Carson City, Nevada 89701
Phone: (775) 883-0404
Fax: (775) 461-7237

YERINGTON OFFICE

720 Main Street, Unit A
Yerington, Nevada 89447
Phone: (775) 463-1222
Fax: (775) 463-1212

ELKO OFFICE

285 10th Street
Elko, Nevada 89801
Phone: (775) 753-5880
Fax: (775) 753-5890

ADMINISTRATIVE OFFICE

701 East Bridger Avenue, Suite
700
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Fax: (702) 388-1641

October 8, 2020

Employment Security Division
Office of Appeals
2800 East St. Louis Avenue
Las Vegas, Nevada 89104

VIA EMAIL at appeals@detr.nv.gov

Re: Notice of Representation

Claimant: Kelly Eppinger

Docket Number: V-20-A-05761

Claimant's SSN: [REDACTED]

Referee: Deirdre Parker

Date of Hearing: October 14, 2020

Time of Hearing: 9:15 a.m.

Dear Office of Appeals:

Please take notice that I, Elizabeth S. Carmona, Esq., Nevada Bar No. 14687, am representing Kelly Eppinger at her hearing before Referee Deirdre Parker on October 14, 2020 at 9:15 a.m.

Ms. Eppinger requests that she be called for the hearing at (702) 460-8481. Please also have Ms. Parker call me for the hearing at (702) 445-4259.

Please also find the enclosed documents that may be introduced into evidence.

If you have any questions or concerns regarding this matter, please feel free to contact me at (702) 445-4259, or at ecarmona@nlsilaw.net.

Sincerely,
NEVADA LEGAL SERVICES, INC.

Elizabeth S. Carmona, Esq.

Enclosures

RECEIVED
EMP. SEC. DIV

OCT 10 2020

LAS VEGAS
APPEALS



LAS VEGAS OFFICE

530 South 6th Street
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Toll Free: (866) 432-0404
Fax: (702) 388-1641

RENO OFFICE

204 Marsh Avenue, Suite 101
Reno, Nevada 89509
Phone: (775) 284-3491
Toll Free: (800) 323-8666
Fax: (775) 284-3497

CARSON CITY OFFICE

209 North Pratt Avenue
Carson City, Nevada 89701
Phone: (775) 883-0404
Fax: (775) 461-7237

YERINGTON OFFICE

720 Main Street, Unit A
Yerington, Nevada 89447
Phone: (775) 463-1222
Fax: (775) 463-1212

ELKO OFFICE

285 10th Street
Elko, Nevada 89801
Phone: (775) 753-5880
Fax: (775) 753-5890

ADMINISTRATIVE OFFICE

701 East Bridger Avenue, Suite 700
Las Vegas, Nevada 89101
Phone: (702) 386-0404
Fax: (702) 388-1641

August 30, 2020

Employment Security Division
UI Claims Center
500 East Third Street
Carson City, Nevada 89713

VIA STANDARD MAIL
VIA FAX at 775-684-0338 and 702-486-7987
VIA EMAIL at internethelp@detr.nv.gov

Postmark-Date 30 Aug 20
Received-Date 3 Sep 20
Certified By [Signature]
NNAC 177 Carson City, NV
UI OPERATIONS

Re: August 26, 2020 Call-In Letter

To Whom It May Concern:

In an Adjudication dated July 1, 2020, DETR found Kelly Eppinger (Claimant ID #5212554) ineligible to receive unemployment insurance benefits. See Adjudication, attached hereto as *Exhibit 1*.

On July 7, 2020, Ms. Eppinger submitted a timely appeal. See Appeal Letter, attached hereto as *Exhibit 2*. In her appeal letter, Ms. Eppinger clearly stated that she was appealing the Adjudication. *Id.*

However, on August 26, 2020, Ms. Eppinger received a letter from DETR, which stated, in part, "your appeal cannot be process because a decision has not yet been made; after a decision is made you will need to send another appeal request at that time if you disagree." See Call-In Letter, attached hereto as *Exhibit 3*.

DETR has clearly made a preliminary decision in Ms. Eppinger's claim, which she timely appealed; therefore, Ms. Eppinger hereby requests that an appeals hearing be immediately scheduled.

I have included a copy of Ms. Eppinger's signed Authorization for Release of Information to this letter, which grants DETR permission to discuss this claim with our office. See Release of Information, attached hereto as *Exhibit 4*.

Thank you for your timely attentional and consideration in this matter. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

Elizabeth S. Carmona, Esq.
Attorney
NEVADA LEGAL SERVICES, INC.
530 South Sixth Street
Las Vegas, Nevada 89101
(702) 386-0404, ext. 128
ecarmona@nlslaw.net

EXHIBIT 1

CONFIDENTIAL

Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-0338
Tel (702) 486-7999 Fax (702) 486-7967



12382802
<http://www.nvdetr.org>

Original

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

RE: LINDEN & ASSOCIATES
PC
Claimant ID: 6212554
Issue ID: 4352502
Week End Date: 04/04/2020
Date Mailed: 07/01/2020
Last Day to Appeal: 07/13/2020
Decision Date: 06/30/2020

* See back of form for Appeal Rights
and other important information.

*Vea el reverso de la hoja para
los derechos de apelación y otra
información importante.

DECISION

You are not entitled to benefits effective 12/08/2019 until you return to work in covered employment and earn at least \$397.00 in each of 10 weeks. (Proof of earnings must be furnished to end this disqualification period.)

As a result of your disqualification, you may have been overpaid Unemployment Insurance benefits. If you have been overpaid, you will be issued a separate determination that will show the amount overpaid.

REASON FOR DECISION

You quit this employment to enter self-employment. You report you were a regular employee and became Independent Contractor as of 12/15/2019. Your employer did not provide requested information regarding your reason for quitting. You provided supporting documentation to show you are a Independent Contractor.

As you have not established a compelling reason for quitting available work, good cause has not been shown.

Pertinent Section of 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.



Report suspected UI Fraud online at <https://uifraud.nvdetr.org>

LET7712_154.0.0

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 you disagree with this decision you have the right to file an appeal. The appeal must be faxed or postmarked by 07/13/2020. You may request an appeal date extension, if you did not file your appeal timely, however, you must show good cause for the delay in filing. You may appeal by writing a letter to the address shown at the top of the previous page. This appeal must include your reason for appealing, the employer name, your social security number and your signature. If an interpreter is needed, please include this request in the appeal letter. During the appeal process you must continue to file claims for any week you are unemployed to preserve any benefit rights that may be established as a result of the appeal. If your employer files an appeal, you should participate in the hearing to protect your rights. If you need additional information, please contact the telephone claims office.

An equal opportunity employer/program.
Auxiliary aids and services available upon request for individuals with disabilities
TTY (775) 687-5353 Relay 711 or (800) 326-6868

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 al para asistencia en traducción.

El Norte de Nevada.....1-775-687-8148
El Sur de Nevada.....1-702-486-2957
Numero de llamada gratuita...1-888-687-8147

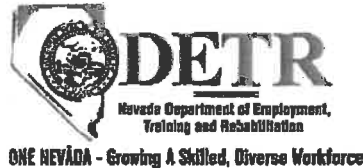
Si la decisión establece que usted has sido descalificado para los beneficios de desempleo, usted tiene el derecho de apelar esta decisión presentando una apelación dentro de once días con el División de Seguridad de Empleo. La fecha límite de apelación está anotada en la parte superior de la carta de decisión. Si usted no presenta una apelación a tiempo, puede perder la oportunidad de recibir los beneficios de desempleo. Si se determina que usted no tiene derecho a recibir los beneficios de desempleo, usted puede ser responsable de devolver los beneficios que haya recibido previamente.

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9 / 3 / 2020 11:15:13 AM 000238483

Sincerely,
Kelly Espary

Employment Security Division
UI Claims Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0350 Fax (775) 684-0338
Tel (702) 486-0350 Fax (702) 486-7987



12872924
<http://www.nvdetr.org>

Claimant ID: 5212554
Re: Call-in Letter
Date Mailed: 08/26/2020

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135

Dear Claimant:

RE: Your appeal cannot be processed because a decision has not yet been made; after a decision is made you will need to send another appeal request at that time if you disagree. If you have any questions, please call the number below.

Additional information is required to determine your entitlement of unemployment insurance benefits.

Please call the Telephone Initial Claims Center at 702-486-0350 or email to internethelp@detr.nv.gov by 09/02/20.

Thank you,

STIC

For immediate consideration Fax to:
(775) 684-0338

or

Mail to:
Employment Security Division/Claims
500 East Third Street
Carson City, Nevada 89713



Report suspected UI Fraud online at <https://uifraud.nvdetr.org>

NEW0177_8.0.0

INFORMACIÓN EN ESPAÑOL

Este comunicado contiene información importante acerca de su reclamo. Si usted tiene problemas para leer y comprender inglés, puede comunicarse con un representante de la División para que le ayuden con la traducción.

El Norte de Nevada.....1-775-687-8148

El Sur de Nevada.....1-702-486-2957

Número de teléfono gratuito...1-888-687-8147

Por favor llame al Centro de Reclamos Telefónicos al número proveído en esta carta, antes de la fecha indicada para proporcionar la información adicional necesaria para determinar su elegibilidad a los beneficios de desempleo.

Si no proporciona la información requerida antes la fecha indicada podría resultar en un retraso o la negación de sus beneficios de desempleo

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AUTHORIZATION FOR RELEASE OF INFORMATION

I, KELLY EPPINGER, hereby authorize and request DETR to release to my attorneys, Nevada Legal Services, Inc., and to any of its attorney employees, other employees or agents, such information, papers, documents, or copies thereof, pertaining to:

KE

me; and

KE

my physical and mental condition, and the medical and all other treatment thereof which you have provided or may provide, including all records and information obtained by you from others;

KE

my application for benefits, assistance or other entitlements from you;

KE

my contracts, rentals, purchases from, or other business dealings with you.

KE

my contacts and communications with you;

which may be requested by any attorney, employee or agent of Nevada Legal Services, Inc.

The information being disclosed pursuant to the authorization may be subject to re-disclosure and may no longer be protected by the HIPAA privacy rule.

This Authorization shall continue in full force and effect for a period of one year from the date of execution, unless sooner revoked in writing. A photocopy of the signed original of this Authorization shall have the same force and validity as the original copy signed by me.

DATED this 28 day of August, 2020.

Kelly Eppinger
KELLY EPPINGER

NEVADA LEGAL SERVICES

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Kelly Eppinger
10372 Splendor Ridge Ave.
Las Vegas, NV. 89135
July 2, 2020

Postmark-Date
Received-Date
Certified By

7-8-20
7-10-20
NNAC 177 Carson City, NV
UI OPERATIONS

SENT VIA Mail

State of Nevada
Department of Employment, Training & Rehabilitation (DETR)
500 East Third Street
Carson City, NV 89713

re: Kelly Eppinger
Issue ID: 4352502
SSN: [REDACTED]
Claimant ID: 5212554

To Whom it May Concern:

This letter will serve as my appeal of the above referenced determination. I request that the determination be reversed.

The determination states: You quit this employment to enter self-employment. This statement is untrue. The company changed my classification from W-2 employee to 1099 independent contractor roughly five months into my employment. I did not sign a contract or any tax documents for 1099. I spoke with June Morton (Adjudicator) on May 28, 2020 and on the same day I provided her with my tax documents, both the W-2 and 1099 from Linden and Associates. The W-2 wages are significantly more than the wages earned on 1099 which reflects the sudden change.

I am requesting that the determination be reassessed and reversed because I did not quit my employment to enter self-employment. I was unlawfully forced to enter self-employment by the company. For the entire time that I worked for Linden and Associates I was under the direct supervision of management. I came in and left when I was told to. I took my lunch and breaks at the time set forth by management and I reported to other facilities when directed to do so by management. Unfortunately, this company has had problems misclassifying employees as independent contractors and have also faced legal actions against them because of it.

Sincerely,

Kelly Eppinger

7-10-20 12:45 PM 00001500158

Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-0338
Tel (702) 486-7999 Fax (702) 486-7987



12382802
<http://www.nvdestr.org>

Original

KELLY EPPINGER
10372 SPLENDOR RIDGE AVE
LAS VEGAS, NV 89135-2321

RE: LINDEN & ASSOCIATES
PC

Claimant ID: 5212554
Issue ID: 4352502
Week End Date: 04/04/2020
Date Mailed: 07/01/2020
Last Day to Appeal: 07/13/2020
Decision Date: 06/30/2020

*** See back of form for Appeal Rights and other important information.**

***Vea el reverso de la hoja para los derechos de apelación y otra información importante.**

DECISION

You are not entitled to benefits effective 12/08/2019 until you return to work in covered employment and earn at least \$397.00 in each of 10 weeks. (Proof of earnings must be furnished to end this disqualification period.)

As a result of your disqualification, you may have been overpaid Unemployment Insurance benefits. If you have been overpaid, you will be issued a separate determination that will show the amount overpaid.

REASON FOR DECISION

You quit this employment to enter self-employment. You report you were a regular employee and became Independent Contractor as of 12/15/2019. Your employer did not provide requested information regarding your reason for quitting. You provided supporting documentation to show you are a Independent Contractor.

As you have not established a compelling reason for quitting available work, good cause has not been shown.

Pertinent Section of 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.



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AA125

From:

07/09/2020 14:22 #725 P.001/003

07/07/2020 4:13 PM FAX

fax

0001/0003

RECEIVED
EMP SEC DIV
JUL 7 2020
LAS VEGAS
APPEALS

TO:	DETR	FROM:	NEW SPANISH
FOR:	702.944.0218	PAGE:	3
PHONE:	702.944.0202	DATE:	7/7/2020
RE:	Appeal	CC:	
<input type="checkbox"/> Urgent		<input type="checkbox"/> Please Comment	
<input type="checkbox"/> For Review		<input type="checkbox"/> Please Reply	
		<input type="checkbox"/> No Reply	

07/07/2020 16:12

No.: R524 L1

P.001/003

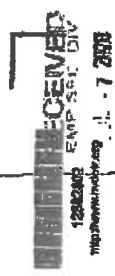
#726 P.002/003

07/07/2020 4:13 PM FAX

Employment Security Division
Adjudication Center
200 East Tropic Street
Carson City, NV 89703-0005
Tel (775) 684-4300 Fax (775) 684-4326
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0002/0003



LAS VEGAS
APPEALS

Original

07/09/2020 14:23

KELLY EPPINGER
10070 BRINDOR RIDGE AVE
LAS VEGAS, NV 89135-2271

REILINDEN & ASSOCIATES
PC
Claimant ID: 6212554
Issue ID: 4032592
Next End Date: 04/04/2020
Date Mailed: 07/01/2020
Last Day to Appeal: 07/13/2020
Decision Date: 06/01/2020

* See back of form for Appeal Rights and other Important Information.
* Este el reverso de la hoja para los derechos de apelación y otra información importante.

DECISION

You are not entitled to benefits effective 12/06/2019 until you return to work in covered employment and earn at least \$397.00 in each of 10 weeks. (Proof of earnings must be furnished to end this disqualification period.)
As a result of your disqualification, you may have been overpaid Unemployment Insurance benefits. If you have been overpaid, you will be issued a separate determination that will show the amount overpaid.

REASON FOR DECISION

You quit this employment to enter self-employment. You report you were a regular employee and became Independent Contractor as of 12/15/2019. Your employer did not provide requested information regarding your reason for quitting. You provided supporting documentation to show you are an Independent Contractor.
As you have not established a compelling reason for quitting available work, good cause has not been shown.

Provisional Section of Law:

NRS 612.290: A person is ineligible to receive benefits for five weeks in which he voluntarily left his last or head-to-last employment: 1) Without good cause, and until he returns to work in subsequent covered employment and earns the 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.



From:

Report received at Fraud office at Nevada Employment

LETTER15A.00

07/07/2020 18:12

No.: R524 L1

P.002/003

725 P.003/003

07/09/2020 14:23

From:

07/07/2020 4:14 PM FAX

00004/0000

Kelly Eppinger
10572 Splendor Ridge Ave.
Las Vegas, NV 89135
July 2, 2020

SENT VIA FAX

State of Nevada
Department of Employment, Training & Rehabilitation (DETR)
500 East Third Street
Carson City, NV 89711

re: Kelly Eppinger
Issue ID: 4352502
SSN: [REDACTED]
Claimant ID: J112554

To Whom It May Concern:

This letter will serve as my appeal of the above referenced determination. I request that the determination be reversed.

The determination states: You quit this employment to enter self-employment. This statement is untrue. The company changed my classification from W-2 employee to 1099 independent contractor roughly five months into my employment. I did not sign a contract or any tax documents for 1099. I spoke with June Moron (Adjuster) on May 28, 2020 and on the same day I provided her with my tax documents, both the W-2 and 1099 from Linden and Associates. The W-2 wages are significantly more than the wages capped on 1099.

I am requesting that the determination be reversed and reversed because I did not quit my employment to enter self-employment. I was unlawfully forced to enter self-employment by the company. For the entire time that I worked for Linden and Associates I was under the direct supervision of management. I came in and left when I was told to. I took my lunch and breaks at the time set forth by management and I reported to other facilities when directed to do so by management. Furthermore, this company has had problems misclassifying employees as independent contractors and have also faced legal actions against them because of it.

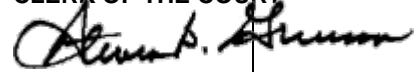
Sincerely,



07/07/2020 16:13

No.: R524 L1

P.003/003



PTOB

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,

vs.

EMPLOYMENT SECURITY DIVISION,
STATE OF NEVADA;
KIMBERLY GAA [now, LYNDA 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.

Case No.: A-20-826310-P

Dept No.: XV

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

Petitioner KELLY EPPINGER (hereinafter referred to as "the Petitioner"), by and through her attorney, ELIZABETH S. CARMONA, ESQ., of Nevada Legal Services, Inc., submits the following Opening Brief in Support of her Petition for Judicial Review.

DATED this 4th day of March, 2021.

Respectfully submitted,

By:



ELIZABETH S. CARMONA, ESQ.
Nevada State Bar No. 14687
NEVADA LEGAL SERVICES, INC.

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Las Vegas, Nevada 89101
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STATEMENT OF ISSUES PRESENTED FOR REVIEW

- I. Whether the Petitioner had good cause to quit after her employer reclassified her employment status from an employee to an independent contractor without her consent.
- II. Whether the Petitioner had good cause to quit after she secured a higher paying job elsewhere.
- III. Whether ESD's Board of Review abused its discretion by upholding the Appeals Referee's decision to find the Petitioner not credible, only as it pertained to the most critical parts of her testimony.
- IV. Whether ESD's 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, and that she simultaneously began working at that job, prior to quitting.

Petitioner was employed at Linden & Associates PC from May 2019 until January 2020.¹ Petitioner filed for unemployment benefits in March 2020.² Petitioner was denied benefits on July 1, 2020.³ Petitioner timely appealed her denial on July 7, 2020.⁴

¹ Record, p. 39.
² Record, p. 25.
³ Record, p. 84-85.
⁴ Record, p. 88.
⁵ Record, p. 31.

1 unemployment benefits pursuant to NRS 612.380.⁶ On October 20, 2020, the Petitioner timely
2 appealed the Referee's decision to the Board of Review.⁷

3 On December 3, 2020, the Board of Review affirmed the decision of the Appeals
4 Referee.⁸ On December 14, 2020, the Petitioner filed the Petition for Judicial Review.⁹

5 **STATEMENT OF FACTS**

6
7 Petitioner was employed by Respondent Linden & Associates PC from May 2019 until
8 January 2020.¹⁰ At the time the Petitioner quit her job, the Petitioner worked as a psychiatric
9 technician.¹¹ In October 2019, Jennifer Williams, an Office Manager at Linden and Associates,
10 approached the Petitioner and demanded that she agree to be changed from a W-2 employee to a
11 1099 independent contractor.¹² The Petitioner felt uncomfortable by this demand and asked Ms.
12 Williams why Linden and Associates wanted to reclassify her employment.¹³ Instead of
13 providing an answer to the Petitioner, Ms. Williams instructed her to meet with Dr. Linden to
14 further discuss the issue.¹⁴ The Petitioner then requested a meeting with Dr. Linden with the
15 intent to discuss being switched from an employee to an independent contractor.¹⁵
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18 While waiting to meet with Dr. Linden, the Petitioner worriedly spoke with other
19 employees regarding this issue and quickly learned that Linden and Associates had unilaterally
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24 ⁶ Record, p. 25-28.

25 ⁷ Record, p. 23.

26 ⁸ Record, p. 14.

27 ⁹ Record, p. 2-3.

28 ¹⁰ Record, p. 39-40.

¹¹ Record, p. 40.

¹² Record, p. 45-47.

¹³ Record, p. 45.

¹⁴ Record, p. 45.

¹⁵ Record, p. 47.

switched three other employees to independent contractors.¹⁶ The Petitioner was also informed that when those employees complained about their reclassification, they were fired.¹⁷

During this time, and before her meeting with Dr. Linden, the Petitioner was switched to an independent contractor without her consent and without her knowledge.¹⁸ The Petitioner did not sign new tax documents, nor did she sign a new employment contract.¹⁹ The Petitioner first learned of the reclassification when she saw the change on a check she received on November 13, 2019.²⁰ After this surprising realization, the Petitioner began searching for other employment and ultimately secured a job at Summit Mental Health on November 26, 2019.²¹ The payrate at Summit Mental Health was \$17.00 per hour to perform basic skills training services and \$22.00 per hour to perform rehabilitative mental health services.²² Both services paid more than the \$15.50 per hour that the Petitioner earned while working at Linden and Associates.²³

When the Petitioner met with Dr. Linden, she asked if he would match her higher rate of pay at Summit Mental Health.²⁴ Dr. Linden advised the Petitioner to take the job at Summit Mental Health because he was unable to match the pay.²⁵ The Petitioner ultimately remained

¹⁶ Record, p. 51-52.

¹⁷ Record, p. 47; p. 50-52.

¹⁸ Record, p. 45; p. 50-51.

¹⁹ Record, p. 45; p. 50-51.

²⁰ Record, p. 45.

²¹ Record, p. 45; p. 48

²² Record, p. 58-59.

²³ Record, p. 80.

²⁴ Record, p. 47-48; p.60.

²⁵ Record, p. 60.

1 working at Linden and Associates in order to complete several projects that she wanted to
2 finish.²⁶

3 Once the Petitioner left Linden and Associates, she worked at Summit Mental Health
4 until a COVID-19-related business closure. The Petitioner subsequently filed for unemployment
5 benefits, but was denied on June 30, 2020.²⁷ The Petitioner timely appealed the Adjudication.²⁸
6

7 Prior to the Appeals Hearing, Counsel for the Petitioner submitted a Letter of
8 Representation to ESD, which contained several, relevant proposed exhibits. Proposed Exhibit 3
9 included earnings statements and weekly payroll reports from Summit Mental Health for the pay
10 periods of February 9, 2020 – February 22, 2020 and February 23, 2020 – March 7, 2020.
11 Proposed Exhibit 3 would have been beneficial to the Petitioner’s case for two reasons. First, the
12 documents would have supported the Petitioner’s testimony regarding her higher rate of pay at
13 Summit Mental Health and, second, the documents would have substantiated the Petitioner’s
14 timeline of events, as it related to how she secured employment at Summit Mental Health on
15 November 26, 2019 prior to leaving her job at Linden and Associates in January 2020.
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18 At the appeals hearing, the Petitioner testified as to the above-mentioned facts. Linden
19 and Associates did not participate in the appeals hearing.²⁹ The Petitioner testified that Linden
20 and Associates’ decision to reclassify her as an independent contract was the “catalyst” for her
21 search of new employment,³⁰ but that she ultimately left Linden and Associates because she was
22 offered a higher paying job at Summit Mental Health.³¹ The Petitioner also testified that she
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26 ²⁶ Record, p. 48-49.

27 ²⁷ Record, p. 87.

28 ²⁸ Record, p. 88.

²⁹ Record, p. 33-34.

³⁰ Record, p. 44.

³¹ Record, p. 43.

1 simultaneously worked both jobs at Summit Mental Health and Linden and Associates in
2 December 2019 until she left Linden and Associates in January 2020.³²

3 During the appeals hearing, Counsel for the Petitioner attempted to admit Proposed
4 Exhibit 3 into the record, but the Appeals Referee refused to admit the evidence based on the
5 reasoning that “the documentation...does not substantiate the employment on or proximate to
6 the separation date” and “the check earning statements are over a month after the separation
7 date.”³³

9 On October 15, 2020, the Appeals Referee determined that the Petitioner did not have
10 good cause to quit because the Petitioner “quit due to personal non-compelling reasons and prior
11 to exhausting all reasonable alternatives available to her.”³⁴

13 On December 14, 2020, the Petitioner filed the Petition for Judicial Review.³⁵

14 **STANDARD OF REVIEW**

15 When an administrative decision is appealed to the District Court through a Petition for
16 Judicial Review, the District Court is to review all questions of law de novo. *SIIS v. United*
17 *Exposition Services*, 109 Nev. Adv. Op. 5 (1993); *Employment Security Dept. v. Capri Resorts*,
18 104 Nev. 527, 763 P.2d 50, 51 (1988); *Jones v. Rosner*, 102 Nev. 215, 719 P. 2d 805, 806 (1986).
19 As to factual issues, the District Court’s function is to review the administrative findings for
20 arbitrariness, capriciousness, or lack of substantial evidence. *Employment Security Dept. v.*
21 *Weber*, 100 Nev. 121, 676 P.2d 1318 (1984). Substantial evidence is that “quantity and quality
22 of evidence which a reasonable person could accept as adequate to support a conclusion.”
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27 ³² Record, p. 44; p. 40.

28 ³³ Record, p. 57

³⁴ Record, p. 25-28.

³⁵ Record, p. 2-3.

1 *Employment Security Dept. v. Cline*, 109 Nev. 74, 847 P.2d 736 (1993); *Employment Security*
2 *Dept. v. Hilton Hotels*, 102 Nev. 606, 608 n.1, 729 P.2d 497, 498 n.1 (1986) (citation omitted).

3 **ARGUMENT**

4 I. The Appeal's Referee's Determination That Ms. Eppinger Quit Her Job At
5 Linden And Associates Due To Personal, Non-Compelling Reasons And Prior To
6 Exhausting All Reasonable Alternatives Is Not Based On Substantial Evidence,
7 Nor The Testimony On Record, And Thus, The Board Of Review's Affirmation
8 Of Her Decision Constitutes An Abuse Of Discretion.

9 Pursuant to NRS 612.380, a "person is ineligible for [unemployment] benefits for weeks
10 in which she has voluntarily left her last or next to last employment without good cause." ESD
11 has not specifically promulgated a standard for good cause for an employee to voluntarily leave
12 her employment and there is little case law from the Nevada Supreme Court on this issue.
13 However, Nevada courts have reasoned that, in the context of assessing good cause to quit, "a
14 claimant must establish a compelling reason that would cause a reasonably prudent person,
15 genuinely desirous of maintaining her employment, to consider leaving." *Flippen v. Nev. Empl.*
16 *Sec. Div.*, 2013 Nev. Dist. LEXIS 3579, *5. In addition, good cause generally means the claimant
17 "had a reason so urgent...that she had no reasonable alternative to quitting, and that she exhausted
18 reasonable resources prior to leaving her job." *Id.*

19 Most neighboring states use a two-part reasonableness test in determining whether an
20 employee has good cause to quit her employment. The first step is to assess whether the
21 employee's reasons for quitting are compelling enough to cause a reasonable person in the same
22 situation to quit. In California, a claimant has good cause to quit where she has a "real, substantial,
23 and compelling" motivation to leave and her circumstances would cause a "reasonable person
24 genuinely desirous of retaining employment to leave work under the same circumstances." Cal.
25 Unemp. Ins. Code § 1256-3(b) (2011); *see also McCrocklin v. Empl. Dev. Dep't*, 156 Cal. App.
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1 3d 1067, 1073-1074, 205 Cal. Rptr. 156, 159-160 (Cal. Ct. App. 1984); *Rabago v. Unemployment*
2 *Ins. Appeals Bd.*, 84 Cal. App. 3d 200, 210-211, 148 Cal. Rptr. 499 (Cal. Ct. App. 1978). In
3 Arizona, good cause to leave employment depends on what a reasonable worker would have
4 done under similar circumstances. Ariz. Admin. Code § R6-3-50210 (1977). Oregon holds that
5 good cause exists where it would “compel a reasonably prudent person to quit.” *Waide v. Empl.*
6 *Div.*, 38 Ore. App. 121, 125-26, 589 P.2d 1138, 1140 (Or. Ct. App. 1979). Utah law also looks
7 to the “reasonableness of the claimant’s actions, and the extent to which the actions evidence a
8 genuine continuing attachment to the labor market.” Utah Code Ann. § 35A-4-405 (2013). In
9 Idaho, good cause requires that the circumstances which compel the decision to leave
10 employment be “real, substantial, and reasonable to the average man or woman.” *Burroughs v.*
11 *Empl. Sec. Agency*, 86 Idaho 412, 414, 387 P.2d 473, 474 (1963); *Ullrich v. Thorpe Elec.*, 109
12 Idaho 820, 823, 712 P.2d 521, 524 (1985). In Washington, good cause is judged by what an
13 “ordinarily prudent person would have done under the circumstances faced by a claimant.”
14 *Robinson v. Empl. Sec. Dept.*, 84 Wn. App. 774, 778-779, 930 P.2d 926, 928 (Wash. Ct. App.
15 1996).

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19 If the employee’s reason for quitting is compelling, the employee must then show that
20 they took reasonable efforts to resolve the issue with their employer. California requires that an
21 employee take reasonable steps to “preserve the employment relationship” before she is justified
22 in leaving her employment. Cal. Unemp. Ins. Code § 1256-3(b) (2011). Arizona requires a
23 worker to attempt to resolve his grievance prior to leaving unless such an attempt was not
24 feasible. Ariz. Admin. Code § R6-3-50515 (1977). Idaho requires a claimant to demonstrate that
25 she examined her reasonable alternatives prior to quitting. *Higgins v. Larry Miller Subaru-*
26 *Mitsubishi*, 175 P.3d 163, 166 (2007).
27
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1 A claimant is not expected to exhaust all reasonable alternatives prior to quitting if doing
2 so would be futile. *Bradford v. Dir. Empl. Sec. Dep't.*, 83 Ark. App. 332, 128 S.W.3d 20 (2003);
3 *Carlsen v. Dep't of Workforce Servs.*, 2005 UT App. 10; *Hoff v. Emp't. Sec. Dep't.*, 2013 Wash.
4 App. LEXIS 984 (Ct. App. Apr. 29, 2013).

5 **A. Petitioner Had Good Cause To Quit Due To Linden And Associates'**
6 **Wrongful, Unilateral Reclassification Of Her Employment From**
7 **Employee Status To Independent Contractor Status.**

8 The Petitioner had a compelling reason to quit her job at Linden and Associates based on
9 their decision to illegally and unilaterally reclassify her employment status. It is clear from the
10 Petitioner's testimony that she never consented to becoming an independent contractor. The
11 Petitioner never signed a new employment contract, nor did the Petitioner complete a 1099 tax
12 form. Rather, Linden and Associates chose to hide this reclassification from the Petitioner,
13 presumably with the self-seeking intent that it would never be discovered.

14 While the Petitioner ultimately left Linden and Associates due to Dr. Linden's refusal to
15 match her higher rate of pay at Summit Mental Health, the Petitioner did testify that Linden's
16 reclassification of her employment was the "catalyst" to her searching for new employment. It is
17 indisputable that the Petitioner's decision to leave Linden and Associates was reasonable, given
18 the realization that she was reclassified as an independent contractor without her consent;
19 therefore, she quit due to a compelling reason.

20 The Petitioner's testimony also demonstrated that she exhausted all reasonable
21 alternatives prior to quitting by scheduling a meeting with Dr. Linden with the intent to discuss
22 the employment reclassification. By the time that Dr. Linden was able to meet with the Petitioner,
23 she had already secured higher paying employment. At that point, any discussion regarding her
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1 employment reclassification was no longer relevant, as the Petitioner was interested in asking
2 Dr. Linden to match Summit Mental Health's higher rate of pay.

3 Even assuming that the Petitioner had not secured higher paying employment at Summit
4 Mental Health prior to her meeting with Dr. Linden, exhausting any reasonable alternatives prior
5 to quitting would have been futile, based on the information she learned regarding former
6 employees who were terminated based on complaining about their employment reclassification.
7

8 **B. The Petitioner Had Good Cause To Quit Her Job At Linden And**
9 **Associates Because She Secured Higher Paying Employment, And**
10 **Began Working, At Summit Mental Health Prior To Quitting Linden**
11 **And Associates.**

12 During the Appeals Hearing, the Petitioner testified that she secured employment at
13 Summit Mental Health on November 26, 2019. The Petitioner testified that she simultaneously
14 worked both jobs at Summit Mental Health and Linden and Associates in December 2019 until
15 she left Linden and Associates on January 1, 2020.

16 The Petitioner testified that she was hired at Summit Mental Health to perform basic skills
17 training services at a rate of \$17.00 per hour and rehabilitative mental health services at a rate of
18 \$22.00 per hour. Both services paid more than the \$15.50 per hour that the Petitioner earned
19 while working at Linden and Associates. The Petitioner further testified that during her meeting
20 with Dr. Linden, she asked him to match Summit's rate of pay, but when he refused, she decided
21 to quit her job at Linden and Associates.
22

23 Securing higher paying employment is a compelling reason to leave a lower paying job.
24 It goes without saying that any reasonable person would choose to quit their current employment
25 if they secured a job that pays more. In the Petitioner's case, this is exactly what she did. The
26 Petitioner also exhausted all reasonable alternatives by attempting to negotiate a pay raise with
27 Dr. Linden; however, when he refused, she elected to leave Linden and Associates for Summit
28

1 Mental Health, which paid \$1.50 more for basic skills training services and \$6.50 more for
2 rehabilitative mental health services.

3 The Petitioner's testimony shows that she had good cause to quit her job at Linden and
4 Associates based their inability to match the higher rate of pay at Summit Mental Health. As
5 such, the Petitioner clearly had good cause to quit and the Board of Review's adoption of the
6 disqualifying Appeals Decision is an abuse of discretion.
7

8 II. The Appeals Referee's Determination That Ms. Eppinger Did Not Secure
9 Employment At Summit Mental Health Prior to Quitting Linden and Associates
10 Is Not Based Upon Substantial Evidence, Nor The Testimony On Record, And
11 Thus, The Board Of Review's Affirmation Of Her Decision Constitutes An
12 Abuse Of Discretion.

13 Despite the Petitioner's testimony during the Appeals Hearing, which demonstrated that
14 she secured employment, and began working, at Summit Mental Health prior to leaving Linden
15 and Associates, the Appeals Referee inexplicably concluded that the Petitioner "provided no
16 supporting evidence substantiating she secured other employment prior to quitting." This
17 decision was subsequently upheld by the Board of Review.

18 An appeals referee may not "tacitly reject a witness's testimony as not credible."
19 *Ceguerra v. Secretary of HHS*, 933 F.2d 735, 738 (9th Cir. 1991). Where a decision rests on the
20 testimony and credibility of a witness, an appeals referee may make a determination that a witness
21 lacks credibility, but "must make findings on the record and must support those findings by
22 pointing to substantial evidence on the record." *Id.* This rule is simply a specific application of a
23 bedrock principle of administrative law. *Id.*
24

25 Here, the Appeals Referee did not believe the Petitioner's testimony that she secured
26 employment at Summit Mental Health prior to leaving her job at Linden and Associates due to a
27 lack of evidentiary proof, yet, she somehow found the Petitioner credible as to *everything* else
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1 she testified to, *regardless* of whether it lacked evidentiary proof or not. The Petitioner did not
2 contradict herself at the Appeals Hearing regarding the timeline of events, nor did the Appeals
3 Referee explain why she found this particular piece of the Petitioner's testimony not credible
4 pursuant to *Ceguerra*.

5 Since the Petitioner's testimony at the Appeals Hearing clearly does not support the
6 Appeals Referee's finding that there was "no supporting evidence substantiating she secured
7 other employment prior to quitting," the Board of Review's adoption of the finding of fact that
8 Ms. Eppinger's testimony was not credible is an abuse of discretion.

9
10 III. The Board of Review's Affirmation Of The Appeals Referee's Decision Not To
11 Admit Proposed Exhibit 3 Into The Record Constitutes An Abuse Of Discretion.

12 While the Appeals Referee was correct in concluding that the documents contained in
13 Proposed Exhibit 3 did not definitively show Ms. Eppinger's start date at Summit Mental Health,
14 the earnings statements did contain a year to date earnings amount, which would have supported
15 Ms. Eppinger's testimony that she was working at Summit Mental Health in January 2020. The
16 statement from February 9, 2020 – February 22, 2020 contained a pay period amount of \$850.00
17 and a year to date earnings amount of \$3504.00. Had the Appeals Referee considered this
18 earnings statement, she could have concluded that Ms. Eppinger worked at Summit Mental
19 Health in January 2020, which further corroborates Ms. Eppinger's testimony that she secured
20 employment at Summit Mental Health in November 2019, prior to leaving Linden and
21 Associates.
22
23

24 **CONCLUSION**

25 In cases regarding claims for denial of unemployment benefits, appeals referees have the
26 duty to fully and fairly develop the record and assure that the testimony of the claimant is
27 considered. The Board of Review's decision to affirm the Appeals Decision shows a failure to
28

1 properly weigh the testimony and make correct conclusions by law. The reliable and substantial
2 evidence in the record does not support the Board of Review's affirmation of the Appeals
3 Decision. Accordingly, this Court should reverse ESD's disqualifying decision and grant Ms.
4 Eppinger the unemployment insurance benefits that she is entitled to.

5
6 DATED this 4th day of March, 2021.

7
8 Respectfully submitted,

9
10 By:



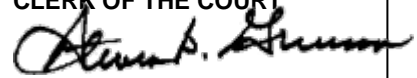
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7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 KELLY EPPINGER,

10 Petitioner,

11 vs.

12 EMPLOYMENT SECURITY
13 DIVISION, STATE OF NEVADA, *et al*;
14 and LINDEN & ASSOCIATES PC, as
15 employer,

16 Respondents.

CASE NO.: A-20-826310-P

DEPT. NO.: XV

ESD'S ANSWERING BRIEF

16 **ESD'S ANSWERING BRIEF**

17 **COMES NOW**, Respondent, Administrator, State of Nevada, Department of
18 Employment, Training and Rehabilitation, Employment Security Division (ESD),
19 by and through Division Senior Legal Counsel, Troy C. Jordan, Esq., and hereby
20 submits ESD's Answering Brief as follows:

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1. Claimant appealed the Determination denying her benefits pursuant to NRS 612.380, voluntary quit. (R, 025)

3. Employer Linden and Associates, P.C. (employer) did not respond to the Notice of Claim Filed – Separation Base Period Employer form, requesting information concerning claimant’s employment and reasons for separation. (R, 025)

5. Claimant reported to ESD's local office her separation was a mutual agreement, and she agreed to mutually separate opposed to continue working since she was offered another position that paid higher wages. (R, 025)

6. Claimant reported to ESD's Adjudication Division she was switched to a "1099" employee (i.e. independent contractor), without being asked. She put out her resume and was hired. She asked the physician (Doc) if he would honor his

1 verbal agreement of giving her a raise. The physician said he could not afford. He
2 added that if she had a better opportunity she should take it. (R, 025)

3 7. Claimant spoke with the physician sometime in November 2019, at the
4 time of giving notice of resignation about the pay raise. (R, 025-026)

5 8. Claimant also reported to ESD's Adjudication Division she was
6 employed with the new employer, Summit Community Services, as a "1099"
7 employee from December 15, 2019 through March 16, 2020. Claimant reported she
8 was hired and/or signed her employment contract with "Summit" on November 26,
9 2019; however, she did not receive her first client until sometime in December of
10 2019. Claimant did not have a copy of the employment contract and/or any
11 supporting documentation showing that she secured other employment prior to
12 quitting. (R, 026)

13 9. Claimant did not recall the exact date she gave employer her notice of
14 resignation. Claimant held a conversation with the physician (Dr. Linden) sometime
15 in November of 2019, at which time she gave him her verbal notice of resignation.
16 Claimant advised the physician she was leaving for a higher paying job. (R, 026)

17 10. The "catalyst" – the final incident – that led to claimant's decision to
18 quit and look for other employment was that her full-time position was changed to a
19 "1099" employee. (R, 026)

20 ///

21 ///

1 11. Claimant was hired by employer as a full-time employee. Claimant's
2 employment classification was changed to a "1099" sometime in November of 2019.
3 (R, 026)

4 12. On October 17, 2019, claimant had a conversation with the office
5 manager (Jennifer) via text regarding coming into the office to sign the "1099"
6 documents. Claimant questioned why she was being changed from full-time to a
7 "1099" after five months of employment. (R, 026)

8 13. The office manager responded by telling claimant that she seemed okay
9 with "it" when they talked, and specifically instructed claimant to speak with the
10 physician, Dr. Linden, about her inquiry regarding the change. (R, 026)

11 14. Claimant never went into the office to sign the "1099" documents.
12 Prior to quitting, claimant never spoke with the physician regarding any problem she
13 had with being changed to a "1099" and/or being "treated unfairly" relative to being
14 changed to a "1099" employee. Also prior to quitting, claimant never filed a formal
15 complaint with employer (employer's human resources, office manager, and/or the
16 physician) or a state government agency regarding any issue related to being
17 changed to a "1099" employee. (R, 026)

18 15. Claimant provided supporting documentation, showing payroll
19 received as a full-time employee through October 26, 2019, and as a "1099"
20 employee. Claimant received her first check as a "1099" employee on November
21 13, 2019. (R, 026)

1 16. Claimant continued working for employer until January 1, 2020.
2 Claimant did not provide employer with an effective last day of work when giving
3 notice, because she did not know when her employment would end due to her
4 agreeing to complete a project and assist with the training of her replacement.
5 Claimant received her last check dated January 3, 2020, on January 7, 2020. (R,
6 026)

7 17. NRS 612.385 provides that a person is ineligible for benefits if she has
8 been discharged from her last or next-to-last employment for misconduct connected
9 with the work. (R, 026)

10 18. When there is doubt whether a separation should be considered a quit
11 or a discharge, it is commonly reasoned that if the employer set in motion the chain
12 of events leading to the separation, the separation was a discharge. If, on the other
13 hand, claimant sets the chain of events in motion then the separation was a voluntary
14 quit or leaving. (R, 026-027)

15 19. Here, the evidence substantiates that claimant was the moving party.
16 Therefore, the voluntary quit provisions of the law apply (NRS 612.380). (R, 027)

17 20. NRS 612.380 provides that a person is ineligible for benefits if she left
18 her last or next-to-last employment without good cause or to seek other employment.
19 That ineligibility continues until she earns remuneration in covered employment
20 equal to or exceeding her weekly benefit amount in each of ten weeks or until she
21 secures other employment. (R, 027)

1 21. Sworn testimony need not be “assumed” to be correct simply because
2 it is sworn testimony. To be the basis for supportable findings, the testimony must
3 not only be sworn testimony, it must be in accord with logic and reason and meet
4 the test of credibility. (R, 027)

5 22. Claimant contends she quit after being changed from a full-time
6 employee to an independent contractor, without her knowledge and/or signing of
7 any documentation. Claimant testified that she received her first check as a “1099”
8 employee on November 13, 2019. She contended that she secured other employment
9 effective November 26, 2019. She further testified that she continued working for
10 employer until January 1, 2020, to finish a project and help train her replacement.
11 (R, 027)

12 23. Evidence substantiates there was some type of conversation between
13 claimant and employer in October of 2019, regarding the “1099” change. Claimant
14 did not attempt to speak to the physician about her inquiries concerning the
15 classification change, as she was instructed to do so by the office manager. This was
16 prior to her quitting. (R, 027)

17 24. It is not within logic or reason that claimant would continue working
18 for employer, and receive compensation from employer for months, in a position or
19 classification she was not in agreement with – whether such disagreement was
20 expressed verbally or in writing. Additionally, claimant’s actions of remaining
21 employed as a “1099” employee, even after securing other employment, lacks logic

1 and reason since claimant maintained that the classification change was the
2 “catalyst” which led to her decision to quit and was the fundamental basis for seeking
3 other employment. (R, 027)

4 25. Claimant provided no supporting evidence substantiating that she
5 secured other employment prior to quitting. (R, 027)

6 26. Based on the evidence in the record, claimant quit the employer due to
7 personal and non-compelling reasons, and she quit prior to exhausting all reasonable
8 alternative available to her. Good cause for quitting was not established. (R, 027)

9 27. NRS 612.457 provides:

10 Upon receipt of the notice of filing a claim, the employing
11 unit shall within 11 days after the date of mailing of the
12 notice, submit to the Division [ESD] all relevant facts
which may affect a claimant’s rights to benefits.

(R, 027)

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

(R, 028)

18 29. Since employer was not present during the hearing to provide
19 testimony, the issue pursuant to NRS 612.457 (whether employer provided ESD
20 with a response) and the issue pursuant to NRS 612.552 (whether employer’s
21 account was subject to charge) were not addressed. (R, 028)

1 30. The appealed Determination issued under NRS 612.380 (voluntary quit
2 without good cause) is affirmed. Claimant is ineligible for benefits from December
3 8, 2019 onward, until claimant works in covered employment and earns an amount
4 equal to or greater than the weekly benefit amount in each of ten weeks. (R, 028)

5 **HEARING**

6 The hearing occurred on October 14, 2020. (R, 031, 033) Claimant and her
7 counsel were present telephonically. (R, 032) Apparently, no witnesses were
8 subpoenaed because, besides the claimant, no witnesses were present. (R, 032) The
9 referee explained, “This is your only evidentiary hearing required by law ... which
10 means it’s your last opportunity to submit new evidence.” (R, 035, ll. 25-27)

11 Claimant was hired by employer around May 15, 2019. Claimant was not
12 sure exactly what date was her last day working for employer, but her last paycheck
13 was received by her on January 7, 2020. (R, 039) Claimant explained, “I’m not
14 exactly sure what my last day was, because I had taken another job and I was
15 finishing up a project for Linden [employer]. They knew that I was - - you know,
16 had took another job.” (R, 039, 24-27) According to Exhibit 13 (at R, 081), which
17 claimant said should be accurate, claimant worked for employer from May 15, 2019
18 to her last day of work – January 1, 2020. Her separation date was January 1, 2020.
19 (R, 040)

20 Claimant’s position with employer was “psychiatric technician.” (R, 040, l.
21 27) Claimant worked for employer Monday through Friday, 8:30 a.m. to 4:00 p.m.

1 with a 30-minute lunch break. Two days a week claimant worked at a nursing home.
2 (R, 041) Before going to the nursing home, she was off on Saturday and Sunday.
3 (R, 041)

4 The referee asked, "Did you resign or quit your position as psychiatric
5 technician?" (R, 041, ll. 18-19) Claimant's short answer for the record was "Yeah."
6 (R, 041, l. 24) Claimant explained: "I took another job. I discussed with Dr. Linden
7 that I had found another job that paid more." (R, 041, ll. 20-21) Claimant provided
8 notice of her resignation to employer, but she could not recall the exact date. (R,
9 041, l. 25 to 042, l. 1) Claimant explained, "I don't know the exact date that I met
10 with Dr. Linden, but I continued to work and complete projects ... for ... over a
11 month after that conversation that I was going to take another job." (R, 042, ll. 1-5)
12 Claimant's resignation notice was verbal, but she gave no effective last day. (R,
13 042) Claimant added, "I didn't know how long it would take me to finish the project
14 that I had been working on, that I had agreed to finish. And I also had agreed to ...
15 train the girl who was going to take over doing what I was doing at the nursing
16 home." (R, 042, ll. 9-14)

17 Claimant's verbal resignation notice was given to Dr. Linden. (R, 042, ll. 15-
18 17) Being changed to a "1099" worker was not the reason given to Dr. Linden for
19 quitting. (R, 042, l. 18 to 043, l. 11) The reason claimant gave to Dr. Linden for
20 quitting was that she had secured a higher paying job with Summit Mental Health
21 (Summit). (R, 043, ll. 12-20) Claimant was hired by Summit on November 26,

1 2019. (R, 043, ll. 24-28) At that time, she worked for employer and Summit. (R,
2 044)

3 Claimant testified that she only sought other employment because of the
4 “1099” issue and she received her first check from employer as a “1099” on
5 November 13, 2019. (R, 044, ll. 3-12) She learned of this classification when there
6 was no direct deposit and the check noted payment for “contracted services.” (R,
7 044, l. 13 to 045, l. 6) Claimant said she was shocked and started looking for a new
8 job. (R, 045, ll. 7-11) However, claimant and office manager Jennifer Williams
9 communicated about the “1099” change on October 16, 2019. (R, 045, l. 12 to 047,
10 l. 5) Claimant never spoke with Dr. Linden about the “1099” classification. (R, 047,
11 l. 6 to 048, l. 6) Claimant spoke with Dr. Linden in November of 2019, when he
12 told her she should take this other job that paid more. (R, 048, ll. 1-3) This
13 conversation between claimant and Dr. Linden occurred before she contacted or
14 signed any papers with Summit. Claimant signed with Summit on November 26,
15 2019. (R, 048, ll. 9-22)

16 Claimant was asked, “If you believe you were being treated unfairly, why did
17 you continue working until January, completing the project and assisting with the
18 training of your replacement?” (R, 048, ll. 23-26) Claimant responded, “Integrity.
19 I had started the project, you know. I was - - I did feel I was being treated unfairly.
20 Once I did secure another job, then, you know, I didn’t really want to - - I don’t
21 know. Basically, integrity.” (R, 048, l. 27 to 049, l. 3)

1 Claimant was asked, “When you filed the unemployment benefit claim ... you
2 reported [to ESD] your separation in accordance with Exhibits 12 through 14 (at R,
3 080-082) as a mutual agreement. Why did you report that if you quit?” (R, 049, ll.
4 9-13) Claimant responded, “Because, at the time, I didn’t really realize that I was
5 quitting. It was - - I looked at it as a mutual separation or a mutual agreement to
6 separate. And that’s just the way I had looked at it. But, per, you know,
7 unemployment, I realized that, oh, yeah, yes, she did quit. So, you know, I looked
8 at it as a mutual, you know, agreement to separate.” (R, 049, ll. 14-21)

9 Claimant took no steps to address the 1099 classification. The only effort
10 taken by claimant to resolve the “1099” classification issue was “waiting to talk to
11 Dr. Linden.” (R, 049, l. 25) Employer had human resources, including Jennifer
12 Williams. Claimant did not file a formal complaint with employer before quitting
13 regarding the “1099” contract service change. (R, 050) Claimant did not file a
14 complaint with a state government agency regarding being changed to a “1099”
15 service contract employee, before quitting. (R, 052, ll. 23-27)

16 The referee addressed the documentation submitted by claimant on October
17 10, 2020, for this hearing. These were marked Exhibits 21-28 (at R, 089-098). (R,
18 052, l. 28 to 058, l. 12) Exhibit 22 (at R, 090) are text exchanges between claimant
19 and employer’s Jennifer Williams regarding the “1099” reclassification. (R, 058, ll.
20 17-21) There was testimony about claimant’s position with Summit to show good
21 cause to quit – higher pay requiring higher level of skill. (R, 058, l. 22 to 059, l. 26)

1 When claimant told Dr. Linden that Summit offered her a higher paying job, Dr.
2 Linden told her to take it. (R, 060) Claimant indicated that she was still an employee
3 (not an independent contractor). (R, 060)¹ Despite the “mutual agreement” and/or
4 claimant quitting to pursue a higher paying job, at the hearing claimant said her
5 “ultimate” reason for quitting was the “1099” reclassification. (R, 060, ll. 26-28)

6 The referee went over Exhibit 22 (at R, 090) with claimant. (R, 061, l. 4 to
7 062, l. 25) Claimant has no supporting documentation showing that she secured
8 other employment before quitting. (R, 062, l. 26 to 063, l. 1) Claimant testified
9 about her work with Summit as a “1099” contracted services worker. (R, 063, l. 1
10 to 064, l. 23) Claimant’s first paycheck from Summit was in December of 2019. (R,
11 065)

12 **EXHIBITS**

13 Exhibit 1 indicates that claimant filed her claim for benefits with ESD on
14 March 30, 2020, with the benefits year beginning March 29, 2020. (R, 069)

15 Exhibit 3 indicates that claimant worked for employer from May 1, 2019 to
16 January 15, 2020, that her reason for the separation was a “mutual agreement,” and
17 that she quit to enter self-employment. (R, 071)

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19
20 ¹ Assuming claimant’s reclassification by employer to a 1099 contract worker was
21 improper, claimant took no steps to resolve this matter before quitting. The propriety
of such a classification change was not addressed and is outside the scope of this
matter.

1 Exhibits 12-14 (R, 080-082) are claimant's responses to ESD regarding her
2 claim for benefits. Claimant's responses were given on March 30, 2020. Claimant
3 worked a day shift, 40 hours per week, and her rate of pay was \$15.50 an hour. (R,
4 080) Claimant was as a "Psychiatric Technician." She discussed her separation with
5 Dr. Linden. Had she and employer not agreed to a mutual separation, she could have
6 continued working for employer. The mutual agreement to separate was due to
7 being offered another position that paid higher wages. (R, 081) Claimant was asked,
8 "Was there an incident that occurred that led to the mutual agreement to separate?"
9 Her response to this question was, "No." (R, 082)

10 Exhibit 15 are note entries made by the ESD Administrator's adjudicator,
11 pertinent to the Determination. It reflects a phone conversation between the
12 adjudicator and claimant on May 28, 2020 at 2:31 p.m., during which time the
13 claimant indicated that her true last employer was employer. Claimant added that
14 Dr. Linden never said anything about claimant being switched to a "1099" worker.
15 Dr. Linden simply told her that if she had a better opportunity she should take it. (R,
16 083)

17 Exhibit 16 is the Determination issued on June 30, 2020 and mailed out on
18 July 1, 2020. The reason for claimant being disqualified to receive benefits was:

19 You quit this employment to enter self-employment. You
20 report you were a regular employee and became
21 Independent Contractor ["1099"] as of December 15,
2019. ... As you have not established a compelling reason

1 for quitting available work, good cause has not been
2 shown [for quitting].
(R, 084)

3 Exhibit 22 are text messages between claimant and employer's Jennifer
4 Williams, dated October 17, 2019. Claimant said she was concerned about being
5 switched to a "1099" worker. Ms. Williams told claimant that this was a discussion
6 she needed to have with Dr. Linden. (R, 091) There was no such discussion.

7 Exhibit 23 is claimant's W-2 from employer, for 2019. (R, 093) Exhibit 24
8 is claimant's 1099 from employer, for 2019. (R, 094)

9 **STANDARD OF REVIEW**

10 If supported by evidence and in the absence of fraud, the decision of the Board
11 is conclusive. NRS 612.530(4); *State Employment Sec. Dept. v. Weber*, 100 Nev.
12 121, 676 P.2d 1318 (1984). In reviewing the Board's decision, this Court is limited
13 to determining whether the Board acted arbitrarily or capriciously. *State Emp. Sec.*
14 *Dept. v. Taylor*, 100 Nev. 318, 683 P.2d 1 (1984); *McCracken v. Fancy*, 98 Nev. 30,
15 31, 639 P.2d 552 (1982); *Bryant v. Private Investigator's Lic. Bd.*, 92 Nev. 278, 549
16 P.2d 327 (1976); *Lellis v. Archie*, 89 Nev. 550, 516 P.2d 469 (1973).

17 In performing its review function, this Court may not substitute its judgment
18 for that of the Board, *Weber, supra*; *McCracken, supra*, nor may this Court pass
19 upon the credibility of witnesses or weigh the evidence, but must limit review to a
20 determination that the Board's decision is based upon substantial evidence. NRS
21 233B.135(3).

1 Substantial evidence has been defined as that which “a reasonable mind might
2 accept as adequate to support a conclusion.” *Desert Valley Const. v. Hurley*, 120
3 Nev. 499, 502, 96 P.3d 739, 741 (2004). Stated another way, it has been held that
4 “substantial evidence” means only competent evidence which, if believed, would
5 have a probative force on the issues. *State ex rel. Util. Consumers Council v. P.S.C.*,
6 562 S.W.2d 688, 692 (Mo. App. 1978). Evidence sufficient to support an
7 administrative decision is not equated with a preponderance of the evidence, as there
8 may be cases wherein two conflicting views may each be supported by substantial
9 evidence. *Robinson Transp. Co. v. Public Service Comm’n*, 159 N.W.2d 636, 638
10 (Wis. 1968).

11 The burden to be met by ESD is to show that the Board's decision is one which
12 could have been reached under the facts of this case. This Court is confined to a
13 review of the record presented below, *Lellis, supra*, at 553-554, and the Board's
14 action is not an abuse of discretion if it is supported by substantial evidence in the
15 record. *State, Dept. of Commerce v. Soeller*, 98 Nev. 579 at 586, 656 P.2d 224
16 (1982); *Lellis, supra*; *North Las Vegas v. Pub. Serv. Comm'n*, 83 Nev. 278, 426 P.2d
17 66 (1967); *Randono v. Nev. Real Estate Comm'n*, 79 Nev. 132, 379 P.2d 537 (1963).

18 In 1986, the Nevada Supreme Court held:

19 Pursuant to NRS 612.515(3), the Board of Review is
20 authorized to affirm, modify or reverse a decision of the
21 appeals referee. The Board may act solely on the basis of
evidence previously submitted, or upon the basis of such
additional evidence as it may direct to be taken.

1 The district court's power to review a decision of the
2 Board, however, is more limited. Where review is sought
3 the factual findings of the Board, if supported by evidence
4 ... shall be conclusive, and the jurisdiction of the court
shall be confined to questions of law. NRS 612.530(4).
Our decisional law is to the same effect. ...

5 In short, **while the Board of Review is empowered to**
6 **conduct a de novo review of the decisions of the appeals**
7 **referee, the district court has no similar authority with**
8 **respect to the decisions of the Board.**

9 *Kraft v. Nev. Emp. Sec. Dept.*, 102 Nev. 191, 193, 717 P.2d 583, 584-
10 85 (1986) (Emphasis added).

11 In the case of *Clark County School District v. Bundley*, 122 Nev. 1440, at
12 1444-45, 148 P.3d 750, at 754 (2006), our Nevada Supreme Court stated as follows:

13 When reviewing an administrative unemployment
14 compensation decision, this court, like the district court,
15 examines the evidence in the administrative record to
16 ascertain whether the Board acted arbitrarily or
17 capriciously, thereby abusing its discretion. With regard
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.

18 Accordingly, we generally review the Board's decision to
19 determine whether it is supported by substantial evidence,
20 which is evidence that a reasonable mind could find
adequately upholds a conclusion. In no case may we
substitute our judgment for that of the Board as to the
weight of the evidence. Thus, even though we review de
novo any questions purely of law, **the Board's fact-based**

1 **legal conclusions with regard to whether a person is**
2 **entitled to unemployment compensation are entitled to**
3 **deference.** (Emphasis added).

4 The hearing before the referee was the only evidentiary hearing and the burden
5 was on the claimant to show she was eligible for unemployment benefits. While an
6 appealing party may have the burdening oar before ESD's administrative tribunal,
7 this Court may only determine whether the record contained substantial evidence
8 from which a reasonable fact-finder could conclude the case was proved. As for the
9 mixed question of fact and law, deference to the Board must be given. *Bundley,*
10 *supra*, 122 Nev. at 1444-45, 148 P.3d at 754, *and see Kolnik v. Nevada Emp't Sec.*
11 *Dep't*, 112 Nev. 11, 908 P.2d 726 (1996) ("Although the court may decide pure
12 questions of law without giving deference to an agency's determination, an agency's
13 conclusions of law which are closely related to an agency's view of the facts are
14 entitled to deference and should not be disturbed if the court determines that they are
15 supported by substantial evidence").

16 ESD's burden is to show this Court that the Board's decision is one which
17 could have been reached under the evidence in the record; not that it is the "only"
18 decision or even the "best" decision which may be suggested by the evidence
19 contained within the record.

20 ///

21 ///

22 ///

1 **ARGUMENT**

2 **1. Applicable law.**

3 NRS 612.380, in pertinent part, states:

4 1. Except as otherwise provided in subsection 2, a person
5 is ineligible for benefits for the week in which the person
6 has voluntarily left his or her last or next to last
7 employment:

8 (a) Without **good cause**, if so found by the
9 Administrator, and until the person earns remuneration in
10 covered employment equal to or exceeding his or her
11 weekly benefit amount in each of 10 weeks.

12 (Emphasis added.) Under NRS 612.380, a person is ineligible for unemployment
13 benefits if he voluntarily leaves his job without good cause.

14 The term “good cause” in the context of NRS 612.380 is not specifically
15 defined in Nevada’s statutory or case law. The Board of Review has generally
16 applied the standard that for good cause to exist, the claimant must prove by a
17 preponderance of the evidence that he had no reasonable alternative but to quit. The
18 conditions giving rise to the reason to quit must be so compelling that a reasonably
19 prudent person would voluntarily give up gainful employment and join the ranks of
20 the unemployed. Similarly, the State of Utah defines “good cause” in the context of
21 unemployment insurance as follows:

22 Good cause as used in unemployment insurance is cause
23 which would justify an employee’s voluntarily leaving
24 work and becoming unemployed.

25 *Child v. Board of Review*, 657 P.2d 1375, 1376 (Utah 1983).

1 In the case of *Calvert v. Alaska Department of Labor*, 251 P.3d 990 (Alaska,
2 2011), the Alaska Supreme Court defined good cause relating to unemployment
3 insurance benefits as follows:

4 To show good cause, a worker must demonstrate that the
5 underlying reason for leaving work was compelling, and
6 that the worker exhausted all reasonable alternatives
7 before leaving the work. The burden of demonstrating
8 both elements of good cause is on the worker.

9 In *MaGee v. Director, Arkansas Employment Security Department*, 55
10 S.W.3d 321 (Ark. App. 2001), the Arkansas court held that to qualify for
11 unemployment benefits the claimant must prove that he acted in good faith showing
12 a genuine desire to retain his employment and that he took all reasonable steps
13 necessary to avoid the loss of his employment. *See also, Teel v. Daniels*, 606 S.W.2d
14 151 (Ark. App. 1980)

15 **2. The Board's decision was not arbitrary or capricious because it**
16 **relied on substantial evidence in the record to find claimant**
17 **voluntarily quit without good cause.**

18 Briefly addressing claimant's stated issues (Opening Brief (OB) at 6), there
19 was no good cause for claimant to quit and thereby become eligible for benefits.
20 This Court can neither weigh the evidence nor may it determine the credibility of the
21 witnesses. *Lellis, supra*, 89 Nev. at 554, and see *Weber, supra* and *McCracken,*
supra. This is in conformity with NRS 233B.135(3), which states: "The court shall
not substitute its judgment for that of the agency as to the weight of the evidence on

1 a question of fact.” Factual findings of the Board, if supported by evidence in the
2 record are conclusive. NRS 612.530(4). This Court cannot reverse such a finding
3 if the finder-of-fact applies the facts to the law, as occurred in this case. *Fremont*
4 *Hotel v. Esposito*, 104 Nev. 394, 397, 760 P.2d 122, 124 (1988). Bottom line –
5 claimant quit to secure a higher paying job. No compelling reason existed and, even
6 assuming the “1099” classification was one, claimant took no steps to address this
7 matter.

8 A case that applies here is *Dolores v. State , Employment Security Division*,
9 134 Nev. 258, 416 P.3d 259 (2018), which held “that where the record shows that
10 the appellant's decision to resign was freely given and stemming from his own
11 choice, such a resignation is voluntary pursuant to NRS 612.380.” *Dolores, supra*,
12 134 Nev. at 258-259, 416 P.3d at 259. *Dolores* involved a resign or be fired
13 ultimatum. Claimant, in the matter before the Court, testified about fellow workers
14 who she claimed were fired for challenging the “1099” classification and, despite
15 quitting for a higher paying job, claimant feared she might be fired if she addressed
16 her “1099” reclassification. In the vein, the *Dolores* court explained:

17 Nevada has not yet defined “voluntary” for purposes of
18 unemployment benefits; however, other jurisdictions have
19 defined it as “a decision to quit that is freely given and
20 proceeding from one's own choice or full consent.” 76 Am.
21 Jur. 2d *Unemployment Compensation* § 104 (2016) (citing
Thompson v. Kentucky Unemployment Ins. Comm'n, 85
S.W.3d 621 (Ky. Ct. App. 2002), and *Ward v. Acoustiseal,*
Inc., 129 S.W.3d 392 (Mo. Ct. App. 2004)). Applying that

1 definition to Dolores's case, the question here is whether
2 Dolores's decision to resign was freely given despite the
fact that he was given a resign-or-be-fired ultimatum.

3 ...

4 The Minnesota Court of Appeals, however, has held that
5 **“[w]hen an employee, in the face of allegations of**
6 **misconduct, chooses to leave his employment rather**
7 **than exercise his right to have the allegations**
8 **determined, such action supports a finding that the**
9 **employee voluntarily left his job without good cause.”**
10 *Ramirez v. Metro Waste Control Comm'n*, 340 N.W.2d
11 355, 357–58 (Minn. Ct. App. 1983). Specifically, in
12 *Seacrist v. City of Cottage Grove*, the Minnesota Court of
13 Appeals **held that an employee who resigned in order**
14 **to protect his work record did so voluntarily when told**
15 **to resign or else disciplinary action resulting in**
16 **termination would result.** 344 N.W.2d 889, 891–92
17 (Minn. Ct. App. 1984). The *Seacrist* court determined that
18 the claimant's letter of resignation was unequivocal and
19 that “[w]hen an employee says he is quitting, an employer
20 has a right to rely on the employee's word.” *Id.* at 892; *see*
21 *also Fallstrom v. Dep't of Workforce Servs.*, 367 P.3d
1034, 1035 (Utah Ct. App. 2016) (“**A termination of**
employment is considered a **262 voluntary quit when
the employee is the moving party in ending the
employment relationship.”).

16 Like the claimants in the aforementioned cases, Dolores
17 resigned when presented a resign-or-be-fired option.
18 While the Minnesota cases involved employees who
19 almost certainly would have been *261 terminated for
20 misconduct had they not resigned, and thus are not entirely
21 factually analogous, we conclude that the legal analysis
from the Minnesota Court of Appeals is most applicable
and adopt it here. **Accordingly, we hold that an**
employee presented with a decision to either resign or
face termination voluntarily resigns under

1 **612.380 when the employee submits a resignation**
2 **rather than exercising the right to have the allegations**
3 **resolved through other available means.**

4 Dolores submitted his unequivocal resignation letter when
5 he faced termination for failing to obtain the SIDA badge
6 required for his job. Although the TSA's application of its
7 policy may have been incorrect, **Dolores consciously**
8 **chose to resign rather than wait and resolve the issue**
9 **through the union or explore other options.** *Edwards v.*
10 *Indep. Servs.*, 140 Idaho 912, 104 P.3d 954, 957 (2004)
11 **("When an employee has viable options available,**
12 **voluntary separation without exploring those options**
13 **does not constitute good cause for obtaining**
14 **unemployment benefits. ...[B]ecause the record shows**
15 **that Dolores considered multiple factors, and that the**
16 **decision to resign was freely given and proceeding from**
17 **his own choice, we conclude that Dolores voluntarily**
18 **resigned pursuant to NRS 612.380.**

19 *Dolores lacked good cause to resign*

20 ...

21 As we have noted above, Dolores **considered many**
22 **factors when deciding to resign rather than face**
23 **termination, and he elected to not pursue other options**
24 **that could have allowed him to maintain his**
25 **employment. We therefore conclude that substantial**
26 **evidence supports *262 the appeals referee's**
27 **determination that Dolores lacked good cause to**
28 **resign, which rendered him ineligible for**
29 **unemployment benefits. NRS 612.380; *Edwards v.***
30 ***Indep. Servs.*, 140 Idaho 912, 104 P.3d 954, 957 (2004)**
31 **("When an employee has viable options available,**
32 **voluntary separation without exploring those options**
33 **does not constitute good cause for obtaining**
34 **unemployment benefits."); see also *Elizondo v. Hood***

1 *Mach., Inc.*, 129 Nev. 780, 784, 312 P.3d 479, 482 (2013)
2 (setting forth the standard of review).

3 *Dolores, supra*, 134 Nev. 260-262, 416 P.3d 261-262 (Emphasis added). Claimant
4 made no showing that pursuing available steps regarding her “1099” classification
5 by employer would be futile. No steps were taken in this regard because the “1099”
6 classification did not really bother claimant. (*See* R, 091) Claimant testified that the
7 reason for quitting was the higher paying job at Summit. (R, 043, l. 14) Promptly
8 thereafter, claimant changed her story. She testified that the ultimate reason – the
9 catalyst – for quitting was employer’s “1099” reclassification. (R, 044, ll. 6-7, 060,
10 ll. 26-28 *and see also* OB at 9 and 13) Not only did claimant take no steps to address
11 such reclassification (R, 049-052), the Summit position she left employer for was a
12 “1099” position (R, 063-064). Neither the “1099” classification (that was never
13 challenged) or securing a higher paying job, entitled claimant to benefits.

14 The record lays out the following. Claimant’s last paycheck from employer
15 was received by claimant on January 7, 2020. (R, 039) Claimant explained, “I’m
16 not exactly sure what my last day was, because I had taken another job and I was
17 finishing up a project for Linden [employer]. They knew that I was - - you know,
18 had took another job.” (R, 039, 24-27) Claimant testified that she quit her position
19 with employer. (R, 041, ll. 18-24) She explained: “I took another job. I discussed
20 with Dr. Linden that I had found another job that paid more.” (R, 041, ll. 20-21)
21 Claimant stated, “I don’t know the exact date that I met with Dr. Linden, but I

1 continued to work and complete projects ... for ... over a month after that
2 conversation -- that I was going to take another job.” (R, 042, ll. 1-5) Claimant’s
3 resignation notice was verbal, but she gave no effective last day because, as she said,
4 “I didn’t know how long it would take me to finish the project that I had been
5 working on, that I had agreed to finish. And I also had agreed to ... train the girl
6 who was going to take over doing what I was doing at the nursing home.” (R, 042,
7 ll. 9-14) Claimant’s “1099” classification by employer was not the reason given to
8 Dr. Linden for quitting. (*See supra and* R, 042, l. 18 to 043, l. 11) The reason
9 claimant gave to Dr. Linden for quitting was that she had secured a higher paying
10 job with Summit. (R, 043, ll. 12-20) Claimant was hired by Summit on November
11 26, 2019. (R, 043, ll. 24-28) At that time, she worked for employer and Summit.
12 (R, 044)

13 Claimant and office manager Jennifer Williams communicated about the
14 “1099” change on October 16, 2019. (R, 045, l. 12 to 047, l. 5) Claimant never
15 spoke with Dr. Linden about the “1099” classification. (R, 047, l. 6 to 048, l. 6)
16 Claimant spoke with Dr. Linden in November of 2019, when he told her she should
17 take this other job that paid more. (R, 048, ll. 1-3) This conversation between
18 claimant and Dr. Linden occurred before she contacted or signed any papers with
19 Summit. Claimant signed with Summit on November 26, 2019. (R, 048, ll. 9-22)

20 Claimant was asked, “When you filed the unemployment benefit claim ... you
21 reported [to ESD] your separation in accordance with Exhibits 12 through 14 (at R,

1 080-082) as a mutual agreement. Why did you report that if you quit?" (R, 049, ll.
2 9-13) Claimant responded, "Because, at the time, I didn't really realize that I was
3 quitting. It was - - I looked at it as a mutual separation or a mutual agreement to
4 separate. And that's just the way I had looked at it. But, per, you know,
5 unemployment, I realized that, oh, yeah, yes, she did quit. So, you know, I looked
6 at it as a mutual, you know, agreement to separate." (R, 049, ll. 14-21) Claimant
7 made no effort to resolve the "1099" classification issue. (R, 049, l. 25) She did not
8 file a formal complaint with employer and did not file a complaint with a state
9 government agency regarding being changed to a "1099" service contract employee,
10 before quitting. (R, 050, and 052, ll. 23-27)

11 When claimant told Dr. Linden that Summit offered her a higher paying job,
12 Dr. Linden told her to take it. (R, 060) The referee went over Exhibit 22 (at R, 090)
13 with claimant. (R, 061, l. 4 to 062, l. 25) Claimant has no supporting documentation
14 showing that she secured other employment before quitting. (R, 062, l. 26 to 063, l.
15 1) Claimant testified about her work with Summit as a "1099" contracted services
16 worker. (R, 063, l. 1 to 064, l. 23) Claimant's first paycheck from Summit was in
17 December of 2019. (R, 065)

18 On March 30, 2020, claimant informed that she discussed her separation with
19 Dr. Linden and that, had she and employer not agreed to a mutual separation, she
20 could have continued working for employer. (R, 080) The mutual agreement to
21 separate was due to being offered another position that paid higher wages. (R, 081)

1 Claimant was asked, “Was there an incident that occurred that led to the mutual
2 agreement to separate?” Her response to this question was, “No.” (R, 082)

3 Accordingly, this matter was not arbitrarily or capriciously decided. Claimant
4 voluntarily quit without good cause and, therefore, she was not eligible to receive
5 benefits. *See* NRS 612.380.

6 **3. The Board did not commit an error of law.**

7 With regard to an error of law, the Court must find a statutory provision or
8 case to overturn the analysis of the Board. Substantial evidence supports the
9 underlying decision and no statutory provision or case exists to suggest an error of
10 law. Claimant did not meet her burden of proof to demonstrate a good faith and
11 genuine desire to retain employment with employer or that she took all reasonable
12 steps necessary to avoid the loss of such employment.

13 **CONCLUSION**

14 Claimant rendered herself unemployed. She had the right to quit her job, but
15 she has no “right” to unemployment insurance benefits. In the case of *Kame v.*
16 *Employment Security Department*, 105 Nev. 22, 769 P.2d 66 (1989), the Nevada
17 Supreme Court held that a claimant has no inherent right to unemployment insurance
18 benefits in Nevada. Instead, the unemployment insurance system was created by the
19 legislature which adopted procedures for the filing and review of claims. The
20 Board’s decision that claimant was not eligible for benefits under NRS 612.380 is
21 supported by probative and substantial evidence in the record and was neither

1 arbitrary nor capricious. The underlying decision is consistent with Nevada's
2 statutory and case law. Claimant was given a full and fair hearing and was not denied
3 due process. The Board's decision must be affirmed and the Petition for Judicial
4 Review denied.

5 **DATED** this 1st day of April, 2021.

6
7 /s/ TROY C. JORDAN

TROY C. JORDAN, ESQ.

Attorney for Nevada ESD Respondents

ATTORNEY'S CERTIFICATE OF COMPLIANCE

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

2. I further certify that this Answering Brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the Answering Brief exempted by NRAP 32(a)(7)(C), it does not exceed 7,580 words.

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

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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 1st day of April, 2021.

5 /s/ TROY C. JORDAN

6 TROY C. JORDAN, ESQ.

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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
4 a true and correct copy of the foregoing ESD'S ANSWERING BRIEF, *by either*
5 electronic means (N.E.F.C.R. Administrative Order 14-2), if possible, as indicated
6 by an email address set forth below, *and/or* by placing the same within an envelope
7 which was thereafter sealed and deposited with the State of Nevada Mail for postage
8 and mailing from Carson City, Nevada, addressed for delivery as follows:

9 Nevada Legal Services, Inc.
10 Elizabeth S. Carmona, Esq.
11 530 South 6th Street
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ecarmona@nlsllaw.net

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

13 Dept15LC@clarkcountycourts.us

14 **DATED** this 1st day of April, 2021.

15 /s/ Tiffani M. Silva
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7 DISTRICT COURT
CLARK COUNTY, NEVADA

8 KELLY EPPINGER,
9 Petitioner,

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

10 vs.

PETITIONER'S REPLY BRIEF

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

16 Respondents.

17
18 Petitioner KELLY EPPINGER, by and through her attorney, ELIZABETH S.
19 CARMONA, ESQ., of Nevada Legal Services, Inc., submits the following Reply Brief in support
20 of her Petition for Judicial Review.

21 DATED this 27th day of April, 2021.

22 Respectfully submitted,

23 By: 
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Ct. 2019).....7

1 **I. ARGUMENT**

2 The facts of this case are simple. Linden and Associates unlawfully reclassified Ms.
3 Eppinger from an employee to an independent contractor without her consent¹. When Ms.
4 Eppinger realized that her employer had illegally reclassified her as an independent contractor,
5 she scheduled a meeting with Dr. Linden to discuss this issue². However, while she waited to
6 speak with Dr. Linden, she began searching for a new job³. Prior to speaking with Dr. Linden,
7 she secured an offer of employment at Summit Mental Health, which paid more than Linden and
8 Associates⁴. By the time she ultimately met with Dr. Linden, the reclassification was no longer
9 relevant, as she only wanted to know if he would match the higher rate of pay offered to her by
10 Summit Mental Health⁵. When he refused to do so, she quit⁶. The Petitioner testified that Linden
11 and Associates' decision to reclassify her as an independent contractor was the "catalyst" for her
12 search of new employment,⁷ but that she ultimately left Linden and Associates because she was
13 offered a higher paying job at Summit Mental Health.⁸

14 **A. The Petitioner Had Good Cause to Quit.**

15 **1. ESD's Determination That Ms. Eppinger Did Not Have Good Cause to**
16 **Quit Goes Against Their Very Own Precedent.**

17 In this case, the Ms. Eppinger secured a higher paying job at Summit Mental Health prior
18 to leaving Linden and Associates – *a fact that ESD admits to in its Answering Brief*⁹; yet,
19 perplexingly enough, ESD nevertheless claims that "the claimant quit due to personal, non-

20
21 ¹ Record, p. 45; p. 50-51.

² Record, p. 47

³ Record, p. 45; p. 48

⁴ *Id.*; Record, p. 58-59.

⁵ Record, p. 47-48; p.60.

⁶ Record, p. 60.

⁷ Record, p. 44.

⁸ Record, p. 43.

24 ⁹ See Answering Brief at 21 (stating, "Bottom line – claimant quit to secure a higher paying job.")

1 compelling reasons¹⁰ that do not amount to good cause. ESD's characterization that Ms.
2 Eppinger did not have good cause to quit, despite the fact that she secured a higher paying job at
3 Summit Mental Health prior to leaving Linden and Associates, goes against ESD's very own
4 precedent. *See* Redacted Adjudication, attached hereto as *Exhibit 1* (stating, "You quit your
5 employment with this employer to accept new work. The information you provided
6 establishes you secured an offer of new work prior to quitting...Since you quit to accept
7 new employment, good cause has been shown") (Emphasis Added). Not only did Ms. Eppinger
8 repeatedly testify that she secured higher paying employment prior to leaving Linden and
9 Associates¹¹, ESD admitted to that fact.; therefore, by ESD's own precedent, she had good cause
10 to quit and is entitled to benefits.

11 2. Case Law Supports that Ms. Eppinger Had Good Cause to Quit.

12 While there is no Nevada case directly on point with the facts of Ms. Eppinger's claim,
13 ESD's rationale in the instant case not only defies common sense, but it also directly contravenes
14 *Unemployment Compensation Board of Review v. Pennsylvania Power and Light Co.*, 23 Pa.
15 Commw. 220, 351 A. 2d. 698 (1976). In that case, the Claimant left his job after accepting
16 employment that paid a higher salary. The Court stated that, in regards to a good cause analysis,
17 "the firm acceptance of other employment is a more compelling reason for terminating present
18 employment" and "the Claimant's decision to leave employment with PP&L to take a higher
19 paying position was certainly consistent with common sense and prudence." *Id.* at 223. Pursuant
20 to the rationale in *Pennsylvania Power and Light Co.*, Ms. Eppinger acted with common sense
21 when she decided to quit her job at Linden and Associates for a higher paying job at Summit
22 Mental Health and her decision to quit was a compelling reason that amounted to good cause.

23

¹⁰ Record, p. 27

24 ¹¹ Record, p. 41; p. 42; p. 43; p. 46; p. 48; p. 59; p. 63

1 3. Ms. Eppinger's Consistent Testimony Supports that She Had Good Cause
2 to Quit.

3 Ms. Eppinger repeatedly testified during her appeals hearing that she left her employment
4 at Linden & Associates for a higher paying job at Summit Mental Health¹². Ms. Eppinger's
5 testimony during her appeals hearing on October 14, 2020 remained consistent with her responses
6 given on her initial application on March 30, 2020¹³ and her testimony given to the Adjudicator
7 on May 28, 2020¹⁴. Despite Ms. Eppinger's consistent testimony, in the Appeals Decision, the
8 Referee found her to be not credible, but failed to articulate *why*, as she is required to do pursuant
9 to *Ceguerra v. Secretary of HHS*, 933 F. 2d 735, 738 (9th Cir. 1991). The Referee's blanket
10 statement that "the claimant provided no supporting evidence supporting that she secured other
11 employment prior to quitting" is simply not aligned with the overwhelming evidence included in
12 the record, not only based on Ms. Eppinger's testimony, but also based on Ms. Eppinger's
13 previous and consistent representations made to ESD.

14 **B. Ms. Eppinger Had No Reasonable Alternative but to Quit.**

15 In regards to the unlawful employment reclassification, Ms. Eppinger had no reasonable
16 alternative but to quit, as any action to keep her employment would have been futile. Ms.
17 Eppinger's case is analogous to the facts in *Devon Preparatory Sch. v. Unemployment Comp. Bd.*
18 *of Review*, 215 A.3d 1073 (Pa. Commw. Ct. 2019). In that case, the Claimant and the rest of the
19 employees were informed of a new policy that would change them from salary to hourly. *Id.* at
20 1073. As a result of this new policy, the Claimant submitted a letter of resignation to be effective
21 that same day. *Id.* The Court found "in light of the Employer's announcement that the new terms
22 of employment would be imposed upon all employees, it would have been futile for Claimant to

23 ¹² Record, p. 41; p. 42; p. 43; p. 46; p. 48; p. 59; p. 63

24 ¹³ Record, p. 81

¹⁴ Record, p. 83

1 voice her concerns.” *Id.* In this case, Ms. Eppinger and other, prior employees were reclassified
2 to independent contractors without their consent¹⁵. The employees who attempted to discuss the
3 reclassification were subsequently fired¹⁶. Since Ms. Eppinger had already been reclassified as
4 an independent contractor – *illegally, and without her consent* – per *Devon*, she was not required
5 to exhaust reasonable alternatives by discussing the issue with her employer, as any action to
6 keep her employment would have been futile.


7 II. CONCLUSION

8 Because there is no substantial evidence in the record to support the Board of Review’s
9 Decision in this case, the Court should reverse ESD’s Decision and immediately award the
10 Petitioner unemployment benefits.

11 DATED this 27th day of April, 2021.

12 Respectfully submitted,

13
14 By:


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

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24 ¹⁵ Record, p. 54



¹⁶ *Id.*

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EXHIBIT 1

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Employment Security Division
Adjudication Center
500 East Third Street
Carson City, NV 89713-0035
Tel (775) 684-0302 Fax (775) 684-4338
Tel (702) 486-7999 Fax (702) 486-7987



<http://www.nvdesa.org>

Original



*** See back of form for Appeal Rights
and other important information.**

***Vea el reverso de la hoja para
los derechos de apelación y otra
información importante.**

DECISION

You are entitled to benefits from  if otherwise eligible.

REASON FOR DECISION

You quit your employment with this employer to accept new work. The information you provided establishes you secured an offer of new work prior to quitting. Your employer agrees that you quit to accept new employment. It has been established you secured the new work before quitting.

Since you quit to accept new employment, good cause has been shown.

Pertinent Section of 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.


**UI
FRAUD**

Report suspected UI Fraud online at <https://des.nv.gov>


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CERTIFICATE OF MAILING

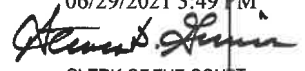
I hereby certify that on this 27th day April, 2021, I served the foregoing Petitioner's Reply Brief, upon the following person(s), by depositing a copy of same in a sealed envelope in the United States Mail, postage pre-paid, to the following:

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

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



ELIZABETH S. CARMONA, ESQ.


CLERK OF THE COURT

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,

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.

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

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:

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

 12. The Petitioner then filed a timely appeal.

 13. At the Petitioner’s appeal hearing, she testified that Linden and Associates’
decision to reclassify her as an independent contractor was the catalyst for her search of new
employment, but that she ultimately left Linden and Associates because she offered a higher rate
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.

///

///

///

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
5 Eppinger's Petition for Judicial Review filed on December 11, 2020 is granted; and

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

9 Dated this _____ day of _____, 2021.

Dated this 29th day of June, 2021



10 JOE HARDY, DISTRICT COURT JUDGE

11 Approved as to form and content:

12 
13
14
15 5FA 90D A181 7CE9
16 Joe Hardy
17 District Court Judge

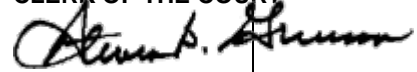
18 ELIZABETH S. CARMONA, ESQ.
19 Nevada State Bar No. 14687
20 **NEVADA LEGAL SERVICES, INC.**
21 530 South Sixth Street
22 Las Vegas, Nevada 89101
23 Telephone: (702) 386-0404, ext. 128
24 Facsimile: (702) 388-1641
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 Attorney for Petitioner

/s/ Troy C. Jordan

 TROY C. JORDAN, ESQ.
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6 *Attorney for DETR/ESD*

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NEO
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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*
14
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16
17
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24

1 **CERTIFICATE OF MAILING**

2 I hereby certify that on the 30th day of June, 2021, I placed a true and correct copy of the
3 foregoing NOTICE OF ENTRY OF ORDER, filed in the above-entitled matter, in the United
4 States Mail, with first-class postage, prepaid, addressed as follows:

5 TROY C. JORDAN, ESQ.
6 500 EAST THIRD STREET
7 CARSON CITY, NEVADA 89713

8 LINDEN & ASSOCIATES PC
9 4900 RICHMOND SQUARE #102
10 OKLAHOMA CITY, OK 73118

11 DATED this 30th day of June, 2021.

12 

13 _____
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:

///

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

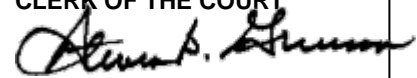
12 
13

14 _____
15 ELIZABETH S. CARMONA, ESQ.
16 Nevada State Bar No. 14687
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17 530 South Sixth Street
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18 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
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5 Facsimile: (775) 684-3992
6 *Attorney for DETR/ESD*



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)
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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:

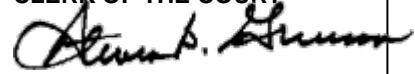
8 Elizabeth S. Carmona, Esq.
9 Nevada Legal Services, Inc.
10 530 South 6th Street
11 Las Vegas, NV 89101
12 ecarmona@nslaw.net
13 Attorney for Petitioner Kelly Eppinger

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**
2 TROY C. JORDAN, ESQ.
3 Nevada State Bar No. 9073
4 State of Nevada, Department of
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6 Employment Security Division (ESD)
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10 Facsimile No.: (775) 684-3992
11 *Attorney for DETR/ESD*

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, LYNDA PARVEN**] in her capacity as
15 Administrator of the EMPLOYMENT
16 SECURITY DIVISION; J. THOMAS SUSICH
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.**

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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@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
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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d)(1)(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 **APPELLANT'S APPENDIX**, by electronically serving through Eflex and/or mailing to the address below and placing the same within an envelope which was thereafter sealed and deposited for postage and mailing with the State of Nevada Mail at Carson City, Nevada, addressed for delivery as follows:

Kristine Kuzemka
Settlement Judge
kkuzemka@armadr.com
shellie@kuzemkalaw.com

Elizabeth S. Carmona, Esq.
Nevada Legal Services, Inc.
530 South 6th Street
Las Vegas, NV 89101
ecarmona@nslaw.net

DATED this 1st day of November, 2021.

/s/ TROY C. JORDAN
TROY C. JORDAN