

1 EMPLOYMENT SECURITY DEPARTMENT

2 STATE OF WASHINGTON

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6 TRANSCRIPT OF PROCEEDINGS

7 of

8 UNEMPLOYMENT INSURANCE RULES MEETING

9 COMMISSIONER'S REVIEW OFFICE RULES

10

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12 Date and Location

13 June 14, 2010 Employment Security Department
Monday, 2:00 p.m. Maple Leaf Conference Room

14 212 Maple Park Drive
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17 BE IT REMEMBERED, that an Unemployment Insurance
18 rule-making public meeting was held on the date, time and
19 location as set forth above. The Employment Security
20 Department was represented by JUANITA MYERS, Rules
21 Coordinator.

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21

Reported by:

22

H. Milton Vance, CCR, CSR
(License #2219)

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EXCEL COURT REPORTING

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June 14, 2010 - Olympia

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1 PROCEEDINGS

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3 welcome and Introductions

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5 MS. MYERS: Let's go ahead and get started. If
6 anybody else arrives, I'll have them introduce themselves
7 as they get here.

8 For those of you who don't know me, which probably
9 isn't anyone, my name is Juanita Myers. I'm with the
10 Employment Security Department. I'm the rules coordinator
11 for the Unemployment Insurance benefits section.

12 And we're here today to talk about some rules
13 regarding the Commissioner's Review Office and the request
14 for advisement orders made by Department staff.

15 And I'd like to go ahead just for the record and ask
16 you to introduce yourselves. And I believe you've already

17 provided the spelling of your last names (to our
18 reporter). So if you could give your name and who you
19 represent. We'll start with Mark.

20 MR. LAMPSON: Thanks. My name's Mark Lampson, and
21 I'm the director of the Unemployment Law Project.

22 MS. JOHNSON: I'm Rebecca Johnson. I'm the
23 Government Affairs Director at the Washington State Labor
24 Council.

25 MR. WONG: Art Wong, Special Assistant for

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2 MR. HARTMAN: Neil Hartman with the Washington State
3 Building and Construction Trades Council.

4 MS. TILTON: Terry Tilton, assistant executive
5 secretary with Washington State Building and Construction
6 Trades Council.

7 MS. TAYLOR: Annette Taylor, Unemployment Insurance
8 Chief Investigator for the Office of Special
9 Investigations.

10 MS. MYERS: Thank you.

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12 Discussion on Rules

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14 MS. MYERS: And you see we have a very brief agenda
15 today. It's pretty limited. We're just going to go
16 through the rules that you've all received and that have
17 been distributed for comment and discussion. And it's

18 going to be a fairly informal process. I would just ask
19 that when you speak, if you would just repeat your name
20 before you start talking so that Milton can get those
21 comments down for the record and attribute them to the
22 correct person. And in case you haven't noticed, this
23 meeting is being recorded. There will be a transcript
24 available if anyone needs it.

25 okay, let's go ahead and start walking through the

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1 rules.

2 The first several pages are just technical changes,

3 but I'll go ahead and just highlight what those technical
4 changes are.

5 On page 1, WAC 192-04-040, it just splits out
6 interested parties for benefit appeals and for tax appeals
7 as opposed to -- it just clarifies who the interested
8 parties are for the different types of appeals.

9 The second section, 192-04-060, says that any
10 interested party who is aggrieved by the decision of the
11 Department set forth in WAC 192-04-050 or for which the
12 Department has provided notice of appeal or petition for
13 hearing rights can file a written appeal. So anybody that
14 we provided in addition to who may be the employer or the
15 claimant who is an aggrieved party, anybody we provided
16 notice to as a potential person who would be impacted by
17 this decision has appeal rights -- or excuse me -- for
18 petition for -- appeal rights or petition for hearing

19 rights. And those individuals would be instructed to send
20 their appeal or petition for hearing by fax or to the
21 address or fax number indicated on the decision notice
22 that they receive or on whatever other appeal document
23 they may have received.

24 The bottom of the page you'll see we've eliminated
25 the section on forms that the Department will provide. we

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1 no longer provide those since we've gone to the
2 telecenters, rather than having people come into the local
3 offices simply because we -- in their appeal -- in the

4 decision they receive, they receive instructions on how to
5 file their appeals rather than going into the Department
6 and getting a form.

7 On page 3, 192-04-170, the only change we've made to
8 that is the change in the Post Office box. You'll see for
9 years we've used Post Office Box 9046. And we're
10 proposing to switch that to a dedicated mail address for
11 petitions for review to 9555. And the reason for that is
12 that all agency mail comes into P.O. Box 9046, and it's
13 also used by the Olympia Office of Administrative
14 Hearings. And it's difficult for our mail staff to sort
15 out the petitions for review and get them in a timely
16 manner to the Commissioner's Review Office. This request
17 was actually made by our mail room.

18 MR. WONG: Juanita?

19 MS. MYERS: Yes.

20 MR. WONG: Sorry for interrupting here, but I just
21 noticed that in the nine-digit zip in both places, we need
22 to make an adjustment there.

23 MS. MYERS: Okay. Oh, you're correct. Thank you for
24 pointing that out.

25 MS. TILTON: What is the adjustment?

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1 MS. MYERS: It would be 98507-9555.

2 Thank you, Art.

3 And the same change at the very bottom of the page.

4 We've added P.O. Box 9555; we need to make the change --

5 the extension on the seven digit -- or excuse me -- the
6 nine-digit zip code the same.

7 MR. LAMPSON: Excuse me, Juanita.

8 Is there a reason why the PFR is sent to the Agency
9 Records Center and the reply to the PFR is sent to the
10 Commissioner's Review Office?

11 MS. MYERS: I'm sorry? where -- oh, the
12 Commissioner's Review Office?

13 MR. LAMPSON: In sub (1), it says send the PFR to the
14 Agency Records Center, and in sub (3), send the reply to
15 the PRF to the Commissioner's Review Office. And it's the
16 same P.O. Box.

17 MS. MYERS: That's a good question. We've had that
18 in there forever. And that's not a change. I will check.

19 This transition will come into effect over a lengthy
20 period of time because we've got a lot of notices and

21 forms out there that use the 9046 mailing address, the
22 instructions that we give people on how to file -- you
23 know, what are their appeal rights and so on. And so
24 until those -- we have nearly a year's supply of those in
25 our warehouse. And so as those are used up, the

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1 Commissioner's Review Office has said that they will
2 accept petitions for review mailed to either address for
3 probably at least 18 months to two years. So it's a slow
4 transition, but we think it'll be beneficial in the long
5 run because it'll -- it'll get the mail more directly --

6 more promptly to the Commissioner's Review Office rather
7 than having to rely on our mail room staff to sort those
8 out because they get mixed in sometimes with the appeal
9 documents that go to the Office of Administrative Hearings
10 office here in Olympia.

11 And now we get, starting at the bottom of page 4, to
12 the substantive change that we're here to talk about
13 today.

14 The Commissioner's Review Office has always had the
15 authority to take decisions under advisement, those
16 decisions that are issued by the Office of Administrative
17 Hearings, take them under advisement. What this piece
18 does is says that the commissioner may designate one or
19 more individuals employed by the Department to request an
20 advisement order on decisions that the individual
21 identifies as cases of first impression, cases that may

22 impact significant numbers of other similarly situated
23 cases, cases that involve United States Department of
24 Labor conformity or compliance issues, or cases in which
25 the interpretation of the law is clearly erroneous.

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1 when they receive that request for advisement, the
2 Commissioner's Review Office will then determine if the
3 request meets those criteria and will notify the
4 Department -- the requester from the Department in writing
5 if the decision will not be taken under advisement and the
6 reasons why.

7 when they decide to take the decision under
8 advisement, they'll accept review, mail a copy of the
9 advisement order to all the parties of record -- the
10 employer and the claimant and the other individuals or
11 their representatives -- within the same time period
12 allowed for the filing of the petition for review, which
13 is 30 days.

14 And then the parties of record have 15 days to submit
15 their argument in support of or opposition to the decision
16 of the Office of Administrative Hearings.

17 And then there's no change to the remainder about the
18 argument having to be hand-delivered or mailed to the
19 Commissioner's Review Office and received within 15 days
20 from the date of mailing of the order.

21 And I know there are comments or questions on this
22 section. Mark, do you want to --

23 MR. LAMPSON: Sure.

24 I guess initially we wondered if it's used so

25 infrequently as the tally here shows, why the necessity

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1 for the change? And the concern that if it hasn't been

2 used very much, is it codifying it in this way and the

3 criteria in this way going to cause it to be more often

4 used? So that was our first concern.

5 I think our second concern was just among the

6 criteria was the forth one, cases in which interpretation

7 of law is clearly erroneous. And we felt that that was

8 more of a judicial review standard and much more of a
9 judgment call I guess on the part of this individual than
10 would be the first three. I mean, the first three would
11 probably be fairly objectively identifiable; whereas, the
12 fourth one -- you know, one person's clearly erroneous is
13 another person's clearly accurate.

14 So that was our concern with these criteria. And
15 that was I think about it.

16 MS. MYERS: Any other comments or questions?

17 MS. JOHNSON: So those concerns that Mark just
18 identified are concerns that we as a labor community
19 collectively have discussed as our concerns from the Labor
20 Council, the building trades and many practitioners.

21 MS. MYERS: As far as why we're doing this, part of
22 the reason is to be more transparent as to what the
23 Department's been doing behind the scenes perhaps and not

24 a secret, but to let you know that this process is in
25 place for the Department to make requests for advisement

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1 to the Commissioner's Review Office, which it sounds --
2 can sound strange for the Department to make a request
3 from the Commissioner's Review Office. But the Review
4 Office really is a semi-autonomous body within the
5 Department and operates independently of the Unemployment
6 Insurance Division, for example.

7 And what our goal is to let people know what we have
8 in place that has been in written agreement since 2003 I

9 believe. And in reality there probably may be some slight
10 increase in the number of decisions since it is codified.
11 I wouldn't say that -- even if we've done five a year, and
12 even if we double that to ten a year, that's still a
13 minuscule amount of decisions that we're going to request
14 for advisement. In reality, each of these requires a
15 great deal of work on our part.

16 Also, we don't take this lightly where we request
17 that a decision be taken under advisement by the
18 Commissioner's Review Office. It's something that we do
19 give serious thought to also before we would do that.

20 (Whereupon, two more
21 participants joined the
22 proceedings.)

22 MS. JOHNSON: I have a follow-up question, but I can
23 wait if you want to have them introduce themselves.

24 MS. MYERS: If I could have you introduce yourselves

25 for the record?

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1 MR. RUDNICK: Sure. William Rudnick, manager of
2 government relations, the Talx Corporation.

3 MS. HENNEBERGER: Nancy Henneberger. I'm an appeal
4 board specialist with Talx Corporation.

5 MS. MYERS: Thank you.

6 MR. WONG: You might want to spell your last name for
7 the court reporter.

8 MS. HENNEBERGER: It's H-E-N-N-E-B-E-R-G-E-R.

9 MS. JOHNSON: (Continuing) My follow-up question is

10 just around the timing. Is there a reason that this
11 policy is coming up now?

12 MS. MYERS: Well, probably just because there are --
13 as we're looking at the Commissioner's Review Office,
14 there is a change in administration and so on and -- in
15 the administration of the Commissioner's Review Office,
16 and we just thought it would be best before the person,
17 the individual, starts to let them know that this
18 agreement is in place and has been for a while. It's not
19 an attempt to do subterfuge behind the scenes or anything.
20 It's just an overall review of the Commissioner's Review
21 Office as administrative -- as the administration is
22 changing.

23 (Addressing new attendees) And just to bring you
24 up-to-date, we're talking about the rule that makes the
25 substantive changes. We've gone through the technical

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1 changes on the rules.

2 And I didn't know if you had any particular comments
3 or concerns about the rules as the rule has been drafted
4 about designating one or more individuals in the
5 Department to request an advisement order.

6 MR. RUDNICK: Who is the person that's going to be
7 the designee that's cited in the rule?

8 MS. MYERS: It's going to be someone at -- most
9 likely the assistant commissioner of the division which
10 currently is Nan Thomas. It's not somebody at my level or

11 even Art's level. It's going to be somebody who's in
12 overall charge. Possibly her deputy director. But most
13 likely it would be the assistant commissioner herself who
14 would buy off on these requests for advisement before they
15 go. So it's not every staff person that's self-sending up
16 requests for advisement. They have to be something that's
17 a reason, that has to fit with the criteria, and sent up
18 through her signature before they would be taken under
19 advisement or request for an advisement be filed.

20 MR. RUDNICK: why does the Department feel that it's
21 necessary to promulgate further rules on this issue when
22 the RCW -- and I'm sorry I didn't bring that particular
23 citation with me -- seems to give ample discretion already
24 to the Review Office to do just what you cite in this WAC?

25 MS. MYERS: The Commissioner's Review Office has the

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1 authority to take any decisions under advisement. You're
2 correct. But what we're putting in place here is that
3 authority within the Department for other branches of the
4 Department to request the commissioner's review, take an
5 issue under advisement -- at least we were talking about
6 before you got here.

7 The Commissioner's Review Office is an semi-
8 autonomous body within the Department. It does not -- it
9 doesn't have direct interaction with the Unemployment
10 Insurance Division. And so there may be cases where the
11 Unemployment Insurance Division because we are interested

12 parties to appeals has the wish in limited cases to
13 request that the Commissioner's Review Office take a
14 decision under advisement, to make that request directly
15 to the Commissioner's Review Office, rather than that
16 office acting on its own taking something under
17 advisement. So it's a request from Unemployment Insurance
18 Division over to the Commissioner's Review Office.

19 MR. RUDNICK: So in cases, for example, separation
20 issue or one maybe for a request of relief charges where
21 the ESD would not necessarily be a party that would have
22 appeal rights, only if the Commissioner's Review Office
23 took under advisement, you're making that extended link
24 there a connection to be able to say, well, we feel this
25 is under the criteria you've mentioned here or in the WAC,

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1 if I understand it correctly, that that would be the case
2 that some department of the ESD other than the Review
3 office can request a further review?

4 MS. MYERS: It would be the Unemployment Insurance
5 Division.

6 when we're talking about a commissioner designating
7 one or more individuals employed by the Department, we're
8 talking about the assistant commissioner, possibly her
9 deputy, who would be authorized to make these requests to
10 the Commissioner's Review Office. It's not all staff
11 within the Department or even all managers within the
12 Department or within the Unemployment Insurance Division

13 who would have the authority to do that. It's a very
14 limited number of staff at the very high level who would
15 make the decision as to whether any request that they
16 receive should go forward or meet these criteria and
17 should go forward to the Commissioner's Review Office as a
18 request for advisement.

19 MR. RUDNICK: Since the Commissioner's Review Office,
20 as you mentioned, is somewhat a semi-autonomous
21 department, would the proposed WAC not perhaps give the
22 color of politics playing into whether or not to ask for a
23 review of the decision?

24 MS. MYERS: Well, I would certainly hope not. The --
25 that's certainly not the intent.

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1 The intent is simply to try to get some clarity
2 around some decisions that may have been -- that have been
3 issued by the Office of Administrative Hearings as far as
4 consistency among -- within the decisions, consistency
5 with state law, consistency with our regulations.

6 And it's certainly not the intent to make this a
7 political maneuvering or political posturing by any
8 stretch. It simply is an intent -- or the intent of this
9 is to get some clarity and to make sure that the law is
10 followed by both the Department but by the Office of
11 Administrative Hearings. Not to say that they're not
12 following the law, but it doesn't appear that their
13 decisions are correct and in compliance with what we

14 believe the law to be. And it's -- as you probably

15 received some statistics, it's used very rarely.

16 It's something that's used -- we didn't do any at all

17 last year probably quite frankly because we were so busy

18 with other things. And as you know, with the economy the

19 way it is, the Unemployment Insurance Division has been

20 absolutely swamped with volumes of work. And whenever we

21 do a request for advisement, it takes a considerable

22 amount of staff time to generate the information and the

23 data we need to justify why we want the Commissioner's

24 Review Office to take it under advisement. So it's not

25 something we would be doing lightly.

1 MR. RUDNICK: One other question I would have is: Is
2 there a potential for this designee that's mentioned in
3 the proposed WAC to maybe model themselves or do you see
4 them perhaps having the authority to model themselves
5 after the like the New Mexico board setup where the chair
6 can summarily take a request for appeal and make a
7 decision to move forward to full board review or to
8 dismiss it based on their subjective discretion. I didn't
9 see that in there, but I'm just kind of asking because
10 having -- being familiar with various boards in various
11 states, they do have a -- some states have a designee
12 position that somewhat reviews applications for review
13 ahead of the board and can make a summary judgment
14 decision.

15 MS. MYERS: No. The petitions for review will
16 continue to go directly to the Commissioner's Review
17 Office. These are cases in which we received decisions
18 issued by the Office of Administrative Hearings and feel
19 that for one of these four reasons that those warrant
20 further consideration by the Commissioner's Review Office.
21 But we would not be standing in the place of -- between
22 the Commissioner's Review Office and those petitions for
23 review that come in, and summarily they're accepting or
24 dismissing those. That's not the provision in the rule,
25 and it's certainly not the intent.

1 Rebecca?

2 MS. JOHNSON: So I wonder how you foresee the cases
3 coming to the attention of the assistant commissioner. Do
4 you right now have a process where you review most or all
5 of the OAH decisions or do you expect --

6 MS. MYERS: Yes.

7 MS. JOHNSON: You do?

8 MS. MYERS: Yes.

9 As the decisions are received by the Department, we
10 have a unit upstairs called the Non Mon Review unit, and
11 their job is to review all the decisions and then key
12 them as to whether they're affirmed, modified, set aside.
13 And those that they have questions about or concerns
14 about, they forward to their manager who looks at them.
15 And in 99 percent of the cases, even though we have

16 questions about the decision, we let them know. We don't
17 do anything as far as a request for an advisement order.
18 It's only in serious cases or the types of situations that
19 we see here that we have outlined that we would request an
20 advisement order.

21 So yes, we do have somebody who looks at this. We
22 have a group of staff who do look at every decision that's
23 issued by the Office of Administrative Hearings.

24 MR. WONG: I can jump in on that because Juanita's
25 referring to the benefit sections. It does also apply to

1 the tax side of things.

2 And in tax, we do review -- or cases that come in are
3 usually -- you go through the status unit and then are
4 brought to the attention -- typically to my attention or
5 to other people's attention in terms of just seeing what
6 happened on different cases.

7 And there have been oddball situations where you get
8 an anomalous case or you get inconsistent cases from
9 decisions from the Office of Administrative Hearings. And
10 it speaks to the former chief of the Office of
11 Administrative Hearings also. And recognizing that there
12 you have independent administrative law judges, and they
13 are not entirely going to be consistent with their
14 decisions.

15 From the agency perspective, we would -- it's helpful
16 to have at least a little greater degree of consistency on

17 some of the -- when a new issue comes up. And so it's
18 been helpful to try to under very, very rare circumstances
19 -- you can see by the numbers there -- try to get
20 resolution.

21 we had inconsistent decisions on whether interpreters
22 were to be considered independent contractors, as an
23 example. And the case eventually -- we had three cases
24 which we -- with inconsistent decisions from the Office of
25 Administrative Hearings. We asked advisement under the

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1 existing procedure which is simply just not codified and

2 asked the Commissioner's Review Office to review them,
3 which they did. Eventually they went up as far as the
4 Court of Appeals and got a resolution of the issue that
5 way.

6 But the intent is simply to take a very limited kind
7 of situation where there are inconsistencies, where there
8 are just things that are just -- where OAH gets it so
9 wrong, for whatever reason, that there needs to be some
10 means of at least addressing it.

11 MS. MYERS: And these can be errors on -- to the
12 detriment of the employer, to the detriment of the
13 claimant, or in favor of the claimant or in favor of the
14 employer.

15 what we're -- you know, it's something where, as Art
16 said, in vary rare cases where the decision is so clearly
17 erroneous, it's very odd and it affects -- it's such an

18 unusual circumstance that it would be a clearly erroneous
19 type of standard, or where we really need consistency in
20 decision-making.

21 For example, one of the issues we're dealing with
22 right now which we may get some request for advisement is
23 the issue of corporate officers. We have judges making
24 different decisions on when corporate officers are
25 eligible for benefits and when they're not. And that's

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1 one issue that may go up for request for advisement as we
2 have time and as we receive -- if we receive additional

3 decisions which is most likely that we will, just to
4 provide some consistency in decision-making so we can
5 notify the Office of Administrative Hearings that the
6 decision has been taken under advisement and here's the
7 ruling of the Commissioner's Review Office.

8 And then, of course, if any party is aggrieved by
9 that decision, then, of course, they have appeal rights.
10 They'd be given opportunity to respond to our advisement
11 order, of course, and make their own argument. And then
12 if the decision is adverse to them, they have the right to
13 appeal further.

14 But we just -- we just feel that it's more
15 transparent to the public to let them know what we're
16 doing and what type of options are available to us and to
17 you so you don't just get a request for advisement out of
18 the blue, that you know where it came from, in most cases

19 that it came from within the Department, and here's our
20 argument in support of it.

21 MR. RUDNICK: One thing I noted. Is the time frame
22 the same for the Department's ability to perfect an
23 advisement request as is for any aggrieved party? 30 days
24 from the date of --

25 MS. MYERS: 30 days, yes. 30 days.

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1 MR. RUDNICK: So after that point, if it hasn't been
2 -- if the original OAH decision has not been challenged,
3 then for all intents and purposes, finality would be --

4 MS. MYERS: Yes. We have the same period of time as
5 any other interested party to raise objections or to
6 request an -- in their case to file a petition for review,
7 or in our case, to request an advisement order. It's 30
8 days.

9 And if that is not taken under advisement or -- well,
10 if we don't get our argument in within those 30 days, the
11 OAH decision becomes final.

12 Any questions? concerns? comments?

13 MR. LAMPSON: I guess something that hadn't occurred
14 to me before, in sub (4) -- and I guess this is part of
15 the existing rule, but the deadline that argument from the
16 parties of record must be hand delivered or mailed to the
17 commissioner's review office and received by that office
18 within 15 days. And we've certainly seen cases where
19 something will arrive at one office of ESD and doesn't get

20 out of the mail room to the other office of ESD within the
21 time limit. And it seems to me it's much simpler if
22 you're going to set deadlines to have it as a mailing date
23 as opposed to a postmark date because, you know, the
24 appealing party or whatever party it is doesn't have any
25 power over when it's received by your office, by the ESD's

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1 office or by the Commissioner's Review Office. But what
2 is within their control is that they postmark it by a
3 certain date.

4 MS. MYERS: Thank you. Any other questions?

5 MR. LAMPSON: About that particular advisement?

6 MS. MYERS: Yes.

7 MR. LAMPSON: No.

8 MS. MYERS: Do you have questions about any further
9 rules?

10 MR. LAMPSON: Well, again, we were just curious,
11 first of all, why the aggrieved party WAC is being
12 repealed. And we're sorry to see it go. Because there
13 have been instances where we needed to prove that our
14 client was an aggrieved party.

15 For instance, the rules of appellate procedure -- I
16 forget the number right now -- but they state that the
17 only party that can bring an appeal is an aggrieved party.
18 And there have been times when we won at the
19 administrative level and then lost at the superior court
20 level because an employer appealed and then the employer

21 argues we're not an aggrieved party when we go to Court of
22 Appeals.

23 There are other arguments against that position, but
24 it's always helpful to have a reg that specifies who are
25 the aggrieved parties.

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1 MS. MYERS: Okay.

2 MR. LAMPSON: But do you know the reason why the --

3 MS. MYERS: well, the original rule just talked about
4 aggrieved parties as being the employer or the claimant --

5 MR. LAMPSON: Right.

6 MS. MYERS: -- and not the Department and not the --
7 but what we wanted to add is because the Department is an
8 interested party, that we in addition can request orders
9 of advisement, not that we file petitions for review
10 independently, but we can certainly look at whether we
11 repeal that particular WAC.

12 MR. LAMPSON: I thought it might be related to that
13 interested-party change.

14 MS. MYERS: Any comment, Art?

15 MR. WONG: No. I was just going to say basically the
16 same thing, that the concern there was that it excludes
17 the Department the way it's worded.

18 MR. LAMPSON: Right.

19 MR. WONG: Let me ask you, Mark, if I may: Does the
20 exclusion of the Department make any difference to you?
21 Or is it just you want -- your concern is to --

22 MR. LAMPSON: It's just helpful to have it saying
23 that the claimant is an aggrieved party. Or the employer,
24 for that matter.

25 (Pause in proceedings.)

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1 MS. MYERS: I'm just jotting down a couple notes.

2 Okay. Thank you.

3 Any further comments or suggestions?

4 MR. RUDNICK: What Mr. Lampson said there about the
5 aggrieved party repealer, I did note -- and this may just
6 be a side bar -- but it does reference to another WAC,

7 which that particular WAC -- I'm thinking it's 150 is the
8 last three -- it does designate who's to be given notice
9 of various -- who is to be delivered various notices that
10 are issued by the ESD such as determinations,
11 redeterminations, et cetera. I would just ask that maybe
12 someone take a really good look at that to make sure by an
13 unintended consequence you don't lop off something that
14 suddenly becomes an issue because it's not referenced by
15 the aggrieved party WAC. And I may be entirely wrong, but
16 it seems somewhat if you read it verbatim you're creating
17 a loophole for yourself.

18 MS. MYERS: By repealing the WAC?

19 MR. RUDNICK: By repealing that particular WAC
20 without making an adjustment to the WAC that it references
21 within its body.

22 (Art Wong handing to Mr.

23 Rudnick the pertinent WAC
for his review. Pause in
24 proceedings.)

25 MS. MYERS: Okay. Did you have any comments or

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□

1 questions for the record or --

2 MR. RUDNICK: No. Sorry. Art was bringing to my
3 attention what the two WAC's said I was referencing.

4 I thought it referenced -- and it may have some
5 influence on this 192-04-050. And I'll stand corrected if
6 that's not the case. But I thought I'd bring that to the
7 Department's attention.

8 MS. MYERS: Okay.

9 MR. RUDNICK: Thank you.

10 MR. WONG: We can certainly take a look at that.

11 Just offhand, though, 050 is basically just the list of

12 what are appealable documents. And it's not even a

13 complete list. So I'm not sure how that affects, but

14 we'll take a look at that.

15 MS. MYERS: Anything further?

16

17 Conclusion

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19 MS. MYERS: Okay. We will go ahead and take your

20 comments and suggestions back and take a look at them and

21 see what changes, if any, we're going to make to the draft

22 rules.

23 There will be certainly a public hearing -- a formal

24 public hearing, CR102 filed, and you'll have an
25 opportunity to make additional comments then. And we hope

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1 to see you then.

2 Thank you very much for participating today.

3 (Whereupon, at 2:48 p.m.,
4 the proceedings adjourned.)

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1 C E R T I F I C A T E

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3 STATE OF WASHINGTON)
) ss.
4 County of Pierce)

5

6 I, the undersigned, a Certified Court Reporter in and
for the State of Washington, do hereby certify:

7

8 That the foregoing transcript of proceedings was
taken stenographically before me and transcribed under my
direction; that the transcript is an accurate transcript
9 of the proceedings insofar as proceedings were audible,
clear and intelligible; that the proceedings and resultant

10 foregoing transcript were done and completed to the best
of my abilities for the conditions present at the time of
11 the proceedings;

12 That I am not a relative, employee, attorney or
counsel of any party in this matter, and that I am not
13 financially interested in said matter or the outcome
thereof;

14

IN WITNESS WHEREOF, I have hereunto set my hand on
15 this 22nd day of June , 2010, at Tacoma,
Washington.

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18

H. Milton Vance, CCR, CSR
Excel Court Reporting

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