Unemployment Insurance Rules Meeting, 9/23/10

1 EMPLOYMENT SECURITY DEPARTMENT

2 STATE OF WASHINGTON

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5 TRANSCRIPT OF PROCEEDINGS

6 of

7 UNEMPLOYMENT INSURANCE RULES HEARING

8 ADVISEMENT ORDER

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11 Date and Location

12 September 23, 2010 Employment Security Department
Thursday, 11:00 a.m. Maple Leaf Conference Room
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BE IT REMEMBERED, that a rules meeting was held on the date and location as set forth above. The Employment Security Department was represented by Pamela Ames, Rules Coordinator.

Reported by:
Cheryl A. Smith, CCR, CVR
(License #3017)

EXCEL COURT REPORTING
16022-17th Avenue Court East
Tacoma, WA 98445-3310
(253) 536-5824
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PROCEEDINGS

Welcome and Introductions

MS. AMES: Pursuant to the authority given under Washington State law, this hearing is hereby convened.

For the record, this hearing is beginning at about 11:08 on September 23rd, and we're at 212 Maple Park Avenue, Olympia Washington.

This hearing is convened to consider testimony
concerning the rulemaking proposal to amend WAC 192-04-175, the advisement order, to establish the circumstances under which an individual designated by the Commissioner may, as an interested party, direct the Commissioner's review office to take a decision issued by the Office of Administrative Hearings under advisement.

Other changes to Chapter 192-04 WAC are made for purposes of clarity and ease of administration.

Notice of this hearing was published in the Washington State Register of September 1, 2010, as WSR 10-17-118 and sent to interested parties.

My name is Pamela Ames. I am the rules coordinator for the Washington State Employment Security Department.

I am representing Commissioner Karen Lee as hearing officer presiding at this public rulemaking hearing.
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1 We have everybody signed in. And I see that not all
2 the blanks are marked. Is that William?
3 MR. RUDNICK: William. Yes, it is.
4 MS. AMES: Were you going to support the proposal,
5 yes or no?
6 MR. RUDNICK: Was I here to support?
7 MS. AMES: Yeah. There's one additional line at the
8 bottom.
9 MR. RUDNICK: I'm sorry. I didn't see the one at the
bottom. No. We're not supporting the proposal, at

least --

MS. AMES: Or with minor changes?

MR. RUDNICK: With changes, perhaps. And with the

proposal you're speaking of, because there's two proposals

here, the one that's being addressed at 11 o'clock?

MS. AMES: Uh-huh. Right.

This attendance log will be kept as a permanent

record of the hearing.

There are Employment Security staff attending this

hearing, and we'll have them introduce themselves.

MS. MYERS: Juanita Myers. I'm the rules coordinator

for the unemployment insurance division.

MR. SHEAHAN: I'm Larry Sheahan from the U&I tax and

wage legislative and legal process coordinator.

MR. RUDNICK: I'm William Rudnick, government
relations manager for the TALX Corporation. We're a third-party administrator for unemployment benefits for employers.

MS. AMES: Thank you.

When the rule is adopted, a concise explanatory statement of the Agency's reason for adopting the rule, including a summary and response to all comments received, will be placed in the permanent rulemaking file, and
copies will be available upon request. Please see me or
Juanita after the hearing should you desire to review any
written submission received to date or receive a copy of
the Agency's concise explanatory statement.

Discussion on Rules

MS. AMES: Today we will begin with Juanita with a
brief explanation of the proposal.

MS. MYERS: The Department is amending rules relating
to the filing of petitions for review by the Commissioner
of decisions issued by the Office of Administrative
Hearings.

WAC 192-04-040 defines the term "interested party"
and is amended for purposes of clarity only.

WAC 192-04-060 specifies the filing of appeals and
petitions for review and is amended for purposes of clarity only.

WAC 192-04-063 defines the term "aggrieved party" and is revised to include the Department as an aggrieved party when it receives an adverse decision by the Office of Administrative Hearings.

192-04-175 specifies the conditions under which the Commissioner may take an order issued by the Office of
Administrative Hearings under advisement. It provides

that the Commissioner may designate one or more

individuals employed by the Department to request an order

of advisement under specific circumstances. The rule

further specifies the actions that the Commissioner's

review office will follow when taking an order under

advisement.

And WAC 192-04-190 is amended solely to revise the

mailing address for petitions for review.

The Department has determined that changes to other

rules or statutes would not achieve the same regulatory

objective. The language of the proposed rules has been

shared with the US Department of Labor. There are no

other state agencies that deal with the subject matter of

these regulations. The Department has chosen a

reasonable, cost-effective manner of achieving the
regulatory objective of the rules. There are no

anticipated environmental consequences associated with the

rules. There are no anticipated fiscal consequences associated with the rules. Specifying performance standards is not appropriate for the rules. The proposed regulations do not impose more than minor costs on business. Input was solicited from stakeholders during the development of the proposed regulations.
MS. AMES: Thank you, Juanita.

We will now hear testimony from those logged in in attendance concerning this proposal. And when you do speak, please state your name and who you represent so that we can have that recorded.

Do we have any testimony?

MR. RUDNICK: Yes. Thank you. My name is William Rudnick. I'm government relations manager for the TALX Corporation. TALX provides UI services to employers. We service over 5,250 active Washington UI accounts to date. We do support changes that enhance and expedite unemployment insurance appeals proceedings for all involved. The proposal the Department has put forth, though, as far as the amendments to WAC 192-04-063 and 192-04-175 we cannot support.

First, as far as 192-04-063 is unclear and we do not
see how the Department can place itself in a position as an aggrieved party as it would suffer no personal or property interest harm from a decision from the Office of

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Administrative Hearings. Only the employer and claimant can do such. The Department is an administrator of the UI Trust Fund and adjudicator for distribution of benefits and such; therefore, we believe that's an erroneous position to take for the Department.
As far as 192-04-175, the advisement order WAC has been in place for a number of years. During the commentary period the Department provided data and some look back to 2002 through, I believe, 2006 on advisement cases that were undertaken by the Commissioner's review board. We believe the data produced by the Department does not support in any way an amendment to the advisement order. It shows that this is used in a very minimal manner, and as far as overturns, I believe the Department -- I'm standing corrected if I'm wrong -- showed that there was only one case in those six years of look back that was overturned by the Commissioner's review office.

To go and to designate a commission, designate someone within the Department in this time and this era of economic distress when the Department itself is seeing unprecedented claims and unprecedented business or needs
for its resources doesn't make sense. I believe it was
put forth that there was no anticipated fiscal cost here,
but you're taking a person or persons away from a focus
into processing claims, reducing benefits for the public
good, taking care of the public good and focusing on an
issue which is relatively small and innocuous at this
point in time.

The other thing that we see that is a problem here is
that you're taking a department with a stellar performance record and pushing it closer to the slippery slope of possible finger-pointing and -- finger-pointing and blame for taking reviews -- potentially taking reviews of cases which neither have been -- have not been appealed by either party in standing, the employer or the claimant. And that doesn't seem to be a good position in which to place the Department.

We feel that the WAC 192-04-175, as it is in its present state, serves the public well, serves the employers well, and doesn't bear reason for this proposed change.

MS. AMES: Thank you.

Is there any further testimony concerning the proposed rulemaking before we conclude the hearing?

MR. RUDNICK: I have none from the TALX Corporation.
MS. AMES: Thank you.

Conclusion

MS. AMES: So this hearing was convened to consider the testimony concerning the rulemaking proposal to amend WAC 192-04-175, advisement order, to establish the circumstances under which an individual designated by the
Commissioner may, as an interested party, direct the Commissioner's review office to take a decision issued by the Office of Administrative Hearings under advisement. Other changes to Chapter 192-04 WAC are made for the purposes of clarity and ease of administration.

All oral testimony presented at this hearing and written submissions will become part of the official record. The deadline for submitting written comments was September 22, 2010.

A final decision regarding adoption of this proposed rulemaking will be made after all testimony and written comments have been considered with a target date of September 27, 2010.

On behalf of Commissioner Karen Lee, thank you for participating in this hearing. If there is no more testimony, this hearing is adjourned at 11:18 on
September 23rd.

(whereupon, proceedings adjourned at 11:18 a.m.)

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STATE OF WASHINGTON )
                    ) ss.
County of Pierce    )

I, Cheryl A. Smith, a Certified Court Reporter in and for the State of Washington, do hereby certify:

That the foregoing transcript of proceedings was taken before me and transcribed under my direction; that the transcript is an accurate transcript of the proceedings insofar as proceedings were audible, clear and intelligible; that the proceedings and resultant foregoing transcript were done and completed to the best of my abilities for the conditions present at the time of the proceedings;

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

IN WITNESS WHEREOF, I have hereunto set my hand on this 23rd day of September, 2010, at Auburn, Washington.

____________________________
Cheryl A. Smith, CCR, CVR