Employment Security Department, 12/8/09

EMPLOYMENT SECURITY DEPARTMENT
STATE OF WASHINGTON

TRANSCRIPT OF PROCEEDINGS
of
UNEMPLOYMENT INSURANCE RULES MEETING

Date and Location
December 8, 2009       Employment Security Department
Tuesday, 10:00 a.m.   Maple Leaf Conference Room
                      212 Maple Park
                      Olympia, Washington

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 Juanita Myers,
Rules Coordinator.

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

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Welcome and Introductions

MS. MYERS: Good morning, and thank you for attending. My name is Juanita Myers. I am the rules coordinator for the Unemployment Insurance Benefits Program.

We are here today to discuss or review a packet of rules that was distributed to the stakeholders about three weeks ago. The rules that we are discussing today cover a wide variety of topics related to the payment of unemployment insurance benefits.

In addition, I distributed a summary, it's on yellow paper, of what those rules changes are. And you'll see quite a few of them that say "Replaces WAC 'such-and-such.'" And the reason for those is that we previously had divided our rules into two chapters -- basically two chapters: substantive rules and interpretive rules. And it was difficult for people to locate which rule they were looking for under those broad subheadings. And so what we are doing is breaking the rules into subject matter chapters, for example, into reporting requirements, suitable work, job separations and so on so that somebody, if they're looking, for example,
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on a rule about a quit, they can look under the job separation chapter instead of trying to discern which chapter it might be in, whether it's in substantive or interpretive.

So on all those rules where it says "replaces," that's what we're doing is we're moving them to the appropriate chapter and, in most cases, trying to simplify the language. These rules were mostly written in the '70s and some in the early '80s before we began the process of trying to plain-talk our rules and put them into simpler English so they can be understood by the general public rather than techno-speak that's only understood by the Department staff or attorneys.

For the record, could I ask you to go ahead and introduce yourselves?

MR. FASSO: Certainly. My name is Gary Fasso. And I'm with the carpenters union.

MR. HARTMAN: I'm Neil Hartman. I'm with the State Building Trades Council.

MS. MYERS: And this is Cheryl. The meeting is going to be recorded today and there will be a transcript available online as soon as we receive it.
Discussion on Rules

MS. MYERS: I'm not certain how we want to proceed with this since there is just the two of you. Did you have particular questions about the rules or would you like me to go through them? Did you have questions about any of the rules that we have?

MR. FASSO: I was kind of looking for a summary, just sort of let us know what the major changes were. I briefly went over the attachments and tried to compare, you know -- I appreciate the plain-talk and the easier language.

MS. MYERS: What you have in your packet then is a section that is in this lighter color called "new sections." And then in the darker -- I don't know what color to call this -- that shows what the amendatory sections are. And then the gray, just for your reference, is on those sections where I say I'm replacing an old WAC. This is the language of the old WAC that's being replaced, just so you have it for your own reference.

What I'm going to do then is go through the new sections and hit the highlights.

MR. FASSO: I appreciate that. Thank you.

MS. MYERS: The first section are a number of
definitions. And that's just for our reference and for

the reference of people that -- the public to let them
know what we're thinking of when we make decisions about
their unemployment benefits.

We've got nondisclosure and willful nondisclosure.
Those are fairly simple. If somebody fails to disclose to
us, whether they did it intentionally or by mistake.

Definition of labor dispute. Preponderance of
evidence is defined.

Conditional payments is defined. I don't know if you
know what conditional payments are. Washington is the
only state that does them. When somebody is in the
process of claiming benefits and then we have a question
about their benefits, we don't stop paying them. We
continue paying them, but we're paying them conditionally
and they have to establish -- they only get to keep those
benefits that we're paying them on condition that they
show that they're eligible for benefits during that week.
Most states stop payment while they resolve the issue, but
Washington does not.

I'm going to skip over those unless you have
questions, those that say they replace an existing WAC.

Go to page 4. We get a lot -- at the bottom of the
authorization file a claim on my behalf. We get a lot of requests from people who say they have a power of attorney for a particular claimant and they say they want to file their weekly claim for them or they want to appeal for them or they want to testify instead of the claimant at the hearing. And we can't do that. The claimant has to certify that they are able and available for work, and they have to testify to the truth of the matter. An attorney can help them. They can get information about their claim, they can file the appeal on their behalf, but the claimant has to do their own testimony and they have to file their own weekly claims.

MR. FASSO: I was going to say, what would the possible circumstance be where a person is ready, willing and able to go to work but can't file their own weekly claim?

MS. MYERS: A lot of them have a spouse do it for them, or a lot of them -- I don't know why they do it on their own or why they don't do it, but I don't know why they choose to do it. But sometimes they'll say I want somebody with a power of attorney to do it on their behalf. And many cases then, what we find out is that person is not available for work.

MR. FASSO: Thank you.
MS. MYERS: Let's move to page 10. It's kind of -- 
the one on the bottom is kind of a technical change. So 
unless you have questions, I'm going to skip that one.

On page 11 we have examples of what we call flagrant 
and wanton misconduct. The law says that an individual 
can have all their wage credits canceled if -- from a 
particular employer if they engage in either criminal 
activity with that employer or they engaged in flagrant 
and wanton misbehavior or misconduct with that individual. 
what I was requested to do was come up with some examples 
of what we would consider flagrant and wanton misconduct. 
And all of these are actual cases. But if you read 
through those, you can see that they're pretty -- 
MR. FASSO: Colorful.
MS. MYERS: -- colorful.
MR. FASSO: I did see those in the e-mail. Thank 
you.
MS. MYERS: Right. And so that's what we're looking 
at is this level of behavior. We're not looking at 
somebody who just did something -- they're some kind of a 
minor -- not to say it's minor, but it doesn't rise to 
this level. Because canceling somebody's wage credits 
from somebody is something that should be on the level of 
criminal activity, because those are the two factors that
can be used.
At the bottom of the page we have a question about what happens if I discharge prior to the effective date of my resignation. And this happens sometimes if they notify their employer that they're going to be resigning, and the employer says, "Leave now. Go ahead." That's what it's talking about. "Go ahead. We don't want you anymore."
We treat the separation in that case as a discharge, and the Department won't deny benefits unless the employer can show that you were discharged for misconduct.
Now, if their employer pays them through the notice period but requires no work, the separation is treated as a quit because you gave notice to quit, you gave notice you're leaving, the employer paid you for those two weeks or whatever amount of notice you gave, then you've quit your job and the separation date is the last day of the notice period. So, for example, you say you're leaving on December 20th, that will be considered the last day of your work and that will be considered a quit if the employer pays you through the 20th of December.
Availability for work beginning on page 12. The Department is going to consider you're available for work if you're willing and able to work full-time, part-time and accept temporary work. You're not required to be
available for part-time or temporary work if it would interfere with your availability to return to your regular occupation.

And where it says "requirement to be available for full-time work" doesn't apply in the circumstances described in -- unless those two acts. That's for people with disabilities. They can work for -- they can seek part-time work as long as they're willing to work for the maximum number of hours permitted by their particular disability.

MR. FASSO: That's under (ii)?

MS. MYERS: Yes.

People need to be capable of accepting and reporting for suitable work within their labor market area. They don't impose conditions that substantially reduce or limit their opportunity to work. For example, they're in retail sales and they say, "I'll only work from eight to five." In retail sales, you know -- eight to five Monday through Friday. Retail sales work has different hours than that. They're evenings or weekends and so on. Or they say, "I won't drive more than five miles from my house because that's as far as the bus goes," or something. It has to be reasonable conditions that impose on their availability.
And this follows with the next one. They have to be available for work during the hours customary for their trade or occupation. They need to be physically present in their normal labor market area unless they're actively seeking and willing to accept work outside the normal labor market.

For example, you can't be calling in your claim from Hawaii while you're on vacation. And then you're not considered available for work if you fail or refuse to seek work as required in a directive issued by the Department. The Department can issue a directive at any time. Basically, it can tell people to expand their method of looking for work. For example, if they're only looking on the Internet, it may tell them they may need to do in-person contacts, it may tell them they need to expand their geographic area, a variety of different things. If they refuse to comply with the directive, then we'll consider they're not available for work.

The bottom one on page 13, leaves with absence, we did this for clarification, basically, for our own staff because we get a lot of questions of what happens when somebody is on a leave of absence. A leave of absence is an absence that's mutually and voluntarily agreed upon by
the claimant and the employer or under a collective bargaining agreement that provides for leaves of absence. The employer-employee relationship is continued and the person is going to be reinstated in the same or a similar job when the leave expires. If they're on a leave of absence, they're not unemployed and they're not eligible for benefits. If they choose not to return to work when the leave of absence ends, then the separation is treated as a quit. If no job is available with the employer when the leave of absence ends, then it's considered a layoff.

MR. FASSO: From that date.

MS. MYERS: From that day forward, yes.

If they've been on medical leave and are released for work by the medical provider but the employer refuses to allow them to come back to work, they're considered to be laid off and potentially eligible for benefits. That does happen in some circumstances in cases where the medical provider says, "You're released for work," and the employer says, "Well, I'm not sure that I want you yet because I don't think you're ready for work." In that case, the claimant is considered to be laid off and they're eligible for benefits.

MR. FASSO: What if that person is on light duty, like, say, injured at work, takes some time off to heal
up, doctor says, "You're not 100 percent but you could do
some light-duty work," and then the company says, "Sorry,
we ain't got nothing for you"?

MS. MYERS: We don't have any for you?

MR. FASSO: Yeah.

MS. MYERS: It would depend on the individual
circumstances. Probably we would say they're not
available for work unless they're willing to seek other

employment, if they're willing to go out and look for
other jobs where they can do light-duty work.

MR. FASSO: Say they're cleared to be a night
watchman and they say, "Okay. Well, I'll go out and hit
some parking lots and see if I can get hired on as a night
watchman," then they're actively seeking work and they can
go --

MS. MYERS: Right.

MR. FASSO: Thank you.

MS. MYERS: There's no leave of absence if the
employer simply offers them a preference for rehire or
promise of a job if something comes up. If they have one
available at the end of the leave, then there's no
employer-employee relationship at that time, and so that's
not a leave of absence but it's considered a voluntary --
excuse me --
MR. FASSO: It's voluntary quit if they decide to take some time off and the employer says, "Well, this is not a leave of absence." They're simply out the door.

MS. MYERS: Yes. And we'll have something when you're ready to come back to work maybe, but we're making no promises.

And then a temporary or an indefinite disciplinary suspension from work by the employer is not a leave of absence. We'll treat that as a discharge from work.

The next one, incarceration. This is an interesting one. We get quite a few cases of this where somebody is incarcerated or lost the job because they were incarcerated and what happens. If the individual deliberately engages in illegal activities where they're aware that there is a clear possibility of arrest and detention for an extended period of time, they are also aware that incarceration may result in their absence from work and misconduct may be established under the statute which talks about excessive absenteeism.

If they're jailed but later released without having been charged, the separation is not considered misconduct. If the employer discharges them for absenteeism or job abandonment because they failed without good cause to notify the employer of their incarceration or anticipated
release date, the failure may be considered misconduct. For example, they don't call and say, I'm in jail for three days. Basically, it's a no call/no show. They don't call up and let them know. They're considered unavailable for work during any days in which they are incarcerated unless those days are not part of the normal work week. And then I give an example. Somebody is scheduled to serve their time on weekends and the weekends aren't part of their normal work week, they're not considered unavailable for work.

The next rule simply deals with AmeriCorps and AmeriCorps VISTA volunteers.

You have a question about the previous?

MR. FASSO: Yes. My wife got somebody hired on at work and then she didn't show up for a couple of days. And it turns out she got pulled over with a ticket and they ran an ID check and she was a victim of identity theft. This person had committed a crime in her name. So they hauled her in and she spent, I think, two days. She couldn't collect unemployment for that time.

MS. MYERS: Correct.

MR. FASSO: Even if she had a claim open and didn't need a waiting week or anything?

MS. MYERS: We would mark her as unavailable for two
MR. FASSO: Thank you. So that's simply tough breaks.

MS. MYERS: But it's not misconduct.

MR. FASSO: Not misconduct. Okay.

MS. MYERS: But she wouldn't collect benefits for those two days.

MR. FASSO: Thank you.

MS. MYERS: I'm going to skip over the AmeriCorps and AmeriCorps VISTA volunteers because that's a particular -- of interest to just a small population of individuals.

The next section, deductions for unemployment benefits, basically codifies what we've had in our policy for quite some time as to what is deductible and what is not.

Income tax withholding, individuals can request that they have 10 percent of their benefits withheld. The deductions for child support, that's an existing rule.

And let's see. Page 18.

MR. FASSO: It doesn't say 10 percent.

MS. MYERS: No, it doesn't. It says the amount specified in -- basically, that's the Internal Revenue Service statute which right now says 10 percent. We left it like that because it used to be 15 and now it's 10. So
just in the event they changed it again, we just put in what's specified in the federal law.

Then the next new rule is on page 18. And that's talking about reimbursement of expenses when they're deductible from benefits in monies that are paid to them -- to you, excuse me, as reimbursement for expenses are not deductible. For example, you get paid for your mileage, your travel, per diem and so on, that's not going to be deducted from your unemployment benefits. But there has to be a reasonable relationship between the amount you are paid and the amount of service you provided. And we gave two examples. Somebody who is a volunteer firefighter -- and this is actually the number one circumstance we get is volunteer firefighters where they're paid $25 for each fire call. That's reasonable to be considered reimbursement for their cost of responding to that fire call.

The next example is we get things like somebody's paid $50 a week. Even if they don't have any fire duties that week, they just get a flat $50. Well, there's no expenses being reimbursed. They're just getting -- it's getting a stipend essentially for being a volunteer firefighter. That would be deductible from your unemployment benefits because there's no relationship
between services performed and the amount of money they received.

Vacation or holiday pay is deductible for benefits if it's assigned to a particular period of time. For example, if you leave your work or you're laid off or whatever and you buy out or they pay out ten days of accrued vacation leave, that's not deductible from benefits because you're cashing out what you've already accrued. But if you are taking vacation leave for a particular amount of time, you're drawing benefits and you choose three days of that particular week to take vacation leave and two days -- or the other four days you want to draw unemployment benefits, you're going to have to deduct that three days of vacation leave because it's not accrued cash out. It's assigned to a particular day.

Back pay and settlements. In some cases, of course, somebody gets reinstated and the employer is going to pay -- may pay back pay to that employee for a particular period of time. The claimant has to report the amount of back pay received for that period of time that they are drawing unemployment benefits.

MR. FASSO: So let's say that an employee is discharged and they're collecting -- they're laid off, they're collecting unemployment benefits and the union
official comes in and files a grievance and they get some
back pay for that time. Would that be an example of what
you're talking about?

MS. MYERS: Yes. Absolutely. The employer is
supposed to deduct the amount owed to the Department,
which is basically what they received in unemployment
benefits offset against their back pay award, then the
claimant gets the overpayment.

Back pay award may not be used to purge a
disqualifying separation. For example, you know when
somebody is discharged for misconduct they have to wait
ten weeks and earn ten times their weekly benefit amount.
So if you were discharged for misconduct and the employer
said, "Oh, we're going to reinstate you and give you" --
award for workers' comp years after it accrues because the appeal process at L&I can go on for quite some time. And what would happen -- because what happens is the law says that we can't go back -- unless there's fraud, we can't go back more than two years and collect unemployment benefits that were overpaid. So what we're saying is this is not a back pay award and it's not fraud. So we're not going to go back and, you know, you got your workers' comp three years -- should have gotten it three years ago and you're finally awarded it, we're not going to go back to that period of time and collect a settlement. Because you can't receive workers' comp and unemployment benefits at the same time. But we'll just let that one go.

Termination pay. Severance pay is not deductible from your unemployment benefits.

Termination pay is deductible, and it's a little bit different than severance pay. Severance pay is basically we're just -- well, you know what severance pay is. Termination pay is slightly different in that the employer may continue benefits for a period of time, they may -- the pay is connected to the last day that you worked. For example, I'm going to buy out your contract and I'll pay you through the end of your contract, or we contracted you to work for six months. I don't even work for you after
five months, and so we're going to continue -- we're going
to pay you or we're going to continue your benefits or so
on for that last month, then that's considered termination
pay and that would be deductible because it's assigned to
a particular period of time after you stopped working.

MR. FASSO: Such as giving someone a two-week notice
and just handing them their two weeks pay, there's bad
blood, we don't even want you on the premises, here's your
two weeks. So they can't collect employment -- they're
considered employed for those next two weeks, so to speak.

MS. MYERS: Correct.

MR. FASSO: If a contract -- off the table here a
little bit. Let's say a contract runs out in June but
they say, "We don't need you anymore," come May. At the
end of -- I mean, is their separation like due to lack of
work? The contract expires and --

MS. MYERS: Oh, sure.

MR. FASSO: Okay. That's due to lack of work.

MS. MYERS: That's lack of work.

MR. FASSO: Thank you.

MS. MYERS: Payment in lieu of notice. Again, if you
have an agreement that the employer gives you advanced
notice of termination and they don't do so, the payments
they receive -- that the claimant receives from the
employer for wages or salary that they would have earned are deductible for benefits.

MR. FASSO: Similar to what I brought up.

MS. MYERS: Similar to what you brought up.

Bonuses. If the bonus is attributable to the work that you performed during a week in which you are claiming benefits, that amount is deductible. For example, you worked 20 hours in a week and you're getting partial unemployment benefits for that particular week. Based on productivity for the week, employer awards a $50 cash bonus to every worker. Because you were drawing unemployment benefits during that week, that $50 is deductible. But if it's not attributable to a week that you're drawing benefits, then it's not deductible.

The example I give here, you work eight months for the employer. At the end of the year they assign out we're going to give a certain amount of money, $100, for every worker that year. That's not attributable to any particular week that that person worked that they're drawing unemployment -- excuse me -- that that person is drawing unemployment benefits. So that's not deductible from benefits. They just get an extra $100.

MR. FASSO: So they were maybe laid off in September, but come December they said, 'We're going to send $100 to
everybody that worked here this year."

MS. MYERS: Right.

MR. FASSO: So that's not deductible.

MS. MYERS: It's not deductible because it's not --

they didn't earn it in a week that they're drawing

unemployment benefits.

Tips are considered earnings and have to be reported

with their weekly benefit amount and they're deductible

for benefits.

MR. FASSO: We can put that one with AmeriCorps.

We're not going to run into that one much.

MS. MYERS: Jury duty. Individuals, money that they

received because they're on call, just because they're on

call or reporting as a prospective juror or serving on a

jury, that's earnings and deductible from benefits. If

you get reimbursement of expenses for travel, meals,
et cetera, that's not deductible.

Sick leave pay. This is a little bit different --

change in policy. They have to report sick leave pay, and

it's treated as earnings and it's deductible from

benefits. But what the law currently says -- well, what

the policy has been is that when you're sick or when

you're unavailable for work, we reduce your benefits by

one day for each day that you're sick. So you get a 1/7
deduction, a 2/7 deduction, depending on if you're sick one or two days of the week. But also we would deduct your earnings that you get if you're paid for that sick leave. So you're hit like a double whammy. You get the deduction from your benefits and you get the deduction from earnings -- from your earnings amount.

So what we're doing here is saying if your benefits are reduced because you report sick leave pay, we're not going to also reduce your earnings. Because that says -- because you've already been hit once with the one or 2/7 deduction. Adding a deduction for payment is hitting the person twice for being sick. So that's a change. We're only going -- they'll get either the 1/7, 2/7 or an earnings deduction. They're not going to get both.

MR. FASSO: We don't run into a lot of sick pay.

MR. HARTMAN: No, no.

MR. FASSO: He and I might get some, but the people we work with aren't going to get much. That's good for us, though.

MS. MYERS: Disability payments. And this is a peculiar rule but it's based on a court decision so we're stuck with it. Basically, disability payments paid by an insurance company based on premiums paid by the employer are not earnings and they're not deductible. But if
they're paid from a trust fund paid solely by the employer's contributions, those are deductible. And I don't understand why they made that fine distinction, but they did -- the court did. So we're putting it into rule. Work-study, I can probably skip that for our purposes today. National Guard pay and AmeriCorps stipends, same thing. Educational employees, which is the next three or four rules, and the last one is actually professional athletes which is probably not of interest here unless you have a side job or something.

The next section we'll go over is the amended sections of the rule. A lot of these are just language cleanup so it shouldn't take too long to go through those. The first one is just cleaning up the language a little bit. We used to have -- people could file a claim by calling the telecenter or the Internet, and it's just cleaning up the language a little bit.

Notice to employer, again, that's just a language cleanup. It had pieces in there about what you do if it's prior to 2004. That's gone. And another little change you see is trying to change the verbiage to active voice rather than passive voice on the rules.
Mailing addresses for the notice to employer.

Normally we used to mail those notices to the address provided by the claimant. Now we're going to mail them to the address that we have on file for the employer. It's very confusing if the claimant says, "Well, I worked at Safeway." And it just doesn't work to mail it to the Safeway out on the Yelm highway because they don't have their human resources there. We mail to the address provided by Safeway for their tax purposes.

Starting on page -- I guess it shows page 6 on the bottom, filing weekly claims for benefits. The change we have in that one is going to make it a little easier, we hope, for claimants. Right now what happens if somebody stops claiming for a period of time and then they want to reopen their claim, what they have to do is they -- for example, I'm laid off this week. I have to call in this week to reopen my claim and then claim it next week. And a lot of people don't know that they have to call in and reopen this week so they get denied for failure to reopen this week. What we're going to do now is we'll backdate it a week. So if you call in next week, we're going to
received first payment, we'll backdate it one week. If they've already received payment, we'll backdate it up to four weeks.

So if they call in, you know, I didn't know I was supposed to call in and reopen my claim, they just started claiming again, we'll backdate that up to four weeks for those people who have already gotten first pay so they don't miss out on benefits from lack of knowledge that they had to call in during the current week of their layoff to draw unemployment benefits. So that's a change to try to make things easier for the claimants and actually cut down on our workload too. We get so many of these, and our workload is so high right now with the massive claims that we've got.

MR. FASSO: It's a win-win.

MS. MYERS: It's a win-win for both.

Simply what that does -- what it used to say is that the individual is liable for any payments if his PIN is used. Well, it's not that hard, unfortunately, to discover somebody's PIN because you can just keep punching in numbers. And what the system will do is ask you to reset your PIN. So if the claimant can show that they didn't authorize that person, then they're not liable for
payments made under their personal identification number.

The next few are just language cleanup.

On page 17 -- that's just in response to an auditor
-- at the top of the page, the underlined section.
People, they go out and they just post their resumes
online and they think that's a job-search contact and it's
not. They have to actually be applying for a particular
job. And we just made that clear in rule because we were
audited by the State Auditor doing their efficiencies
audits, performance audits they now have. So we're just
making that clear.

And similarly on the bottom of page 20, if they make
an application online, newspaper or other means where
there's no contact, because we ask that they keep records
of who they contacted and so on, obviously, they don't
have that information. So what we ask them is to attach
either a copy of the newspaper ad or some kind of
confirmation notice. Usually when you submit an
application online you get a confirmation. So we're just
asking them to keep that with their job-search log when
they don't have the name of an employer.

The next rule is mostly language cleanup.

Disqualification of students, probably don't care
And that's probably all the two of you would be interested in. The rest are just we have a whole stack of rules being repealed mostly because we've replaced them with others.

Any other questions or comments?

MR. FASSO: I don't think so.

MS. MYERS: No?

MR. FASSO: Gosh, I don't think so.

MS. MYERS: Did you have any? No?

MR. HARTMAN: I think they're all pretty straightforward.


MS. MYERS: I thank you for attending. We're going to have another meeting on Thursday in Seattle.

MR. FASSO: Do you think you're going to have a bigger turnout?

MS. MYERS: I think I'm going to have a bigger turnout because a lot of our people come from Seattle, the people who are more interested. The Unemployment Law Project, the legal services reps and so on are from Seattle and are more likely to attend that one.

MR. FASSO: I probably would have but it conflicted.
So this was handy for me -- fairly handy.

MS. MYERS: If there are no further questions, we're going to go ahead and adjourn.

(Whereupon, proceedings adjourned at 11:00 a.m.)
CERTIFICATE

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 21st day of December, 2009, at Auburn, Washington.

____________________________ ______________________________
Cheryl A. Smith, CCR, CVR Excel Court Reporting
Excel Court Reporting
16022-17th Avenue Court East
Tacoma, WA 98445

(CCR License #3017)