

BEFORE THE EMPLOYMENT SECURITY DEPARTMENT

VERBATIM RECORD OF PROCEEDINGS
(VIA TELECONFERENCE)
Thursday, June 11, 2020
Olympia, Washington

APPEARANCES:

PRESIDING: MR. JOSHUA DYE
LEGISLATIVE & RULES COORDINATOR
P.O. Box 9046
Olympia, WA 98507-9046

ALSO PRESENT: BOB BATTLES
MICHELE WILLMS
CATHERINE HOLM
STAFFORD STRONG
SCOTT MICHAEL

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SCOTT MICHAEL

1 BE IT REMEMBERED that on Thursday, June 11,
2 2020, at 9:01 a.m. at Olympia, Washington, before DIXIE J.
3 CATTELL, Certified Court Reporter, appeared, via
4 teleconference, whereupon, the following proceedings were
5 had, to wit:

6 * * *

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8 HEARING OFFICER JOSHUA DYE: Pursuant to the
9 authority given under the Washington State law, this
10 hearing is hereby convened. For the record, this hearing
11 is beginning at 9:01 a.m. on June 11, 2020. Due to the
12 Governor's "Stay Home, Stay Healthy" order, this hearing is
13 being held via teleconference.

14 This hearing is convened to consider testimony on
15 unemployment benefits while on leave of absence. Notice of
16 this hearing was submitted to the Washington State Register
17 on May 4, 2020, as WSR 20-10-072, and sent to interested
18 parties via the Department's electronic delivery system.

19 My name is Josh Dye and I am the Legislative and
20 Rules Coordinator for the Washington State Unemployment
21 Security Department's Legal Services.

22 I represent the Commissioner as hearing officer
23 presiding at this rule-making hearing.

24 We have one other staff. I'll let them introduce
25 themselves at the moment.

1 MR. SCOTT MICHAEL: Good morning. This is Scott
2 Michael, Legal Services Coordination Manager.

3 HEARING OFFICER JOSHUA DYE: Off the record.

4 Dixie, can you mute your line?

5 (Off the record)

6 HEARING OFFICER JOSHUA DYE: And continuing, I
7 will call on participants to testify based on your phone
8 number. When you're called to testify, please state your
9 name, organization, phone number, and address or e-mail
10 address for the record.

11 Please be advised that this hearing is being
12 transcribed. The transcript will become part of the
13 official rule-making file. This hearing is convened to
14 receive written submissions and oral testimony presented on
15 the proposal.

16 **A Concise Explanatory Statement of the agency's**
17 **reasons for adoption of the rules, including a summary and**
18 **response to all comments received for each rule, will be**
19 **sent to all requesting and commenting parties and placed in**
20 **the permanent rule-making files. The Concise Explanatory**
21 **Statement for the rule will also be published on the**
22 **agency's rule-making webpage, which is**
23 **www.esd.wa.gov/newsroom/rulemaking.**

24 **For a brief explanation of the proposed rule:**
25 **Washington Administrative Code 192-170-080(1)(a) was**

1 determined to be invalid by the Commissioner of the
2 Employment Security Department. In that decision the
3 Commissioner determined the rule was in direct conflict
4 with RCW 50.04.310. Consequently, the Department is
5 repealing WAC 192-170-080(1)(a). The remainder of
6 Washington Administrative Code 192-170-080 will remain in
7 effect.

8 We will now hear testimony from those logged in in
9 attendance concerning the proposal.

10 Mr. Battles, would you like to begin?

11 MR. BOB BATTLES: Sure. Bob Battles,
12 Association of Washington Business. We are the State
13 chamber and the state technology and manufacturing
14 association. Our members employ about 750,000 of the
15 State's employees, and I'm testifying with some concerns
16 about this change. A couple of things are concerning.

17 First of all, I'm concerned about the notice process
18 and the timing. The only information that was received --
19 of course, we had the notice that said the time of the
20 hearing. Any links took an extreme amount of time to find,
21 multiple conversations with people to try to even find the
22 call-in information, which was only located in the 102 on
23 one line.

24 We had concerns with the timing that written comments
25 options were prior -- being submitted as of June 10, which

1 was not before -- after the hearing and also have concerns
2 with the fact that the adoption of date or adoption date of
3 the rule is to be the 15th of June.

4 We believe this process, especially during the
5 COVID-19 situation, should be spread out and given more
6 time. This comes from also the fact that this is not an
7 emergency rule because it's based on -- the reason why this
8 rule is being adopted is based on a decision that was made
9 in 2011, which does not warrant then the expedited and/or
10 emergency type of approach that this has been done.

11 With that in mind, we also believe that this rule
12 change goes beyond what the case was and that the case did
13 not invalidate as much as it said that when looking at a
14 particular situation, you evaluate what the purpose behind
15 the layoff is. And in this case you would have either
16 asked the question of whether there should have been an
17 employee -- was it an employee voluntary quit, or was this
18 not a voluntary quit? That's what -- with the wholesale
19 removal of this rule, you open up what I believe to be the
20 possibility of conformity issues with the federal
21 government and that you are excusing certain individuals
22 from the requirement to search for work because of their, a
23 lot of times, their status being "leave of absence" and yet
24 then turning around and providing them with UI's, which
25 would put you in conformity issues.

1 Therefore, we would oppose this rule change and ask
2 that more time be done before this gets moved on to the
3 next stage and look forward to responses to these concerns.

4 Thank you.

5 HEARING OFFICER JOSHUA DYE: Thank you,
6 Mr. Battles.

7 We will move to our next person I have signed in on
8 the list. The phone number is 622-0445. If you wish to --
9 let me know if you wish to give testimony and, if so,
10 please give your name, if you represent an organization,
11 and your contact information. Thank you.

12 PHONE NUMBER 622-0445: No testimony.

13 HEARING OFFICER JOSHUA DYE: All right, thank
14 you.

15 I will move to phone number 929-9633.

16 PHONE NUMBER 929-9633: No testimony here.

17 HEARING OFFICER JOSHUA DYE: Okay. 507-7853.

18 MS. MICHELE WILLMS: This is Michelle Willms of
19 the Associated Dental Contractors. My contact information
20 is, e-mail, MWillms, so M-W-I-L-L-M-S, @agcwa.com, and I
21 just want to state that we agree with what Bob Battles said
22 from AWB.

23 HEARING OFFICER JOSHUA DYE: Thank you, Michele.
24 Would you spell your name for the court reporter, please.

25 MS. MICHELE WILLMS: My first name is Michele

1 M-I-C-H-E-L-E. The last name is Willms, W-I-L-L-M-S.

2 HEARING OFFICER JOSHUA DYE: Thank you very
3 much.

4 MS. MICHELE WILLMS: Yes.

5 HEARING OFFICER JOSHUA DYE: Phone No. 628-1698.
6 (No response).

7 HEARING OFFICER JOSHUA DYE: Again, that's
8 360-628-1698. If you're speaking, you may be muted.

9 (No response).

10 HEARING OFFICER JOSHUA DYE: All right, we'll
11 circle back to you and move to the last number I have on
12 the list, 867-8721.

13 MS. CATHERINE HOLM: Hi, this Cat Holm from the
14 Washington Food Industry Association, and no comment except
15 that we also agree with Bob Battles, and we are planning on
16 submitting written comments.

17 HEARING OFFICER JOSHUA DYE: Okay. Would you
18 mind spelling your name for the court reporter, please.

19 MS. CATHERINE HOLM: Yes. So it's Catherine,
20 C-A-T-H-E-R-I-N-E and then Holm, H-O-L-M.

21 HEARING OFFICER JOSHUA DYE: Thank you very
22 much.

23 And is there anyone else on the line that wishes to
24 give testimony that has not yet had a chance to do so?

25 (No response).

1 HEARING OFFICER JOSHUA DYE: All right.

2 And one more call for phone number 628-1698.

3 (No response).

4 HEARING OFFICER JOSHUA DYE: All right. Hearing
5 no further testimony, we'll move to conclude the hearing.
6 This hearing was convened to consider testimony on proposed
7 rules concerning unemployment benefits while on leave of
8 absence.

9 All testimony presented at this hearing and written
10 submissions will become part of the official record.

11 The deadline for submitting comments was June 10,
12 2020.

13 **A final decision regarding adoption of this proposed**
14 **rule-making will be made after all testimony and written**
15 **comments have been considered.**

16 **On behalf of the Commissioner, thank you for**
17 **participating in this hearing. This hearing is adjourned**
18 **at 9:11 a.m. on June 11, 2020.**

19 **And, Dixie, with that, we can go off the record.**

20 THE COURT REPORTER: Okay, I'm off the record.
21 (Concluded at 9:11 a.m.)

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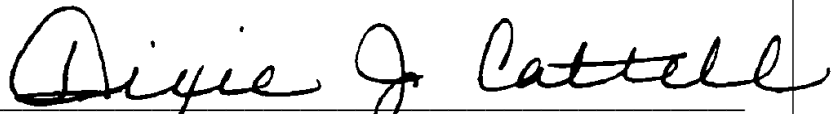
I, DIXIE J. CATTELL, the undersigned Registered Professional Reporter and Washington Certified Court Reporter, do hereby certify:

That the foregoing VERBATIM RECORD OF PROCEEDINGS was taken before me telephonically and completed on the 11th day of June, 2020, and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of the testimony of said witness; to the best of my ability;

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

That I am herewith securely sealing the VERBATIM RECORD OF PROCEEDINGS and promptly serving the same upon MR. JOSHUA DYE.

IN WITNESS HEREOF, I have hereunto set my hand this 16TH day of JUNE, 2020.



Dixie J. Cattell, RPR, CCR
NCRA Registered Professional Reporter
Washington Certified Court Reporter CSR#2346

<hr/> <p style="text-align: center;">1</p> <hr/> <p>10 4:25 8:11 102 4:22 11 2:1,11 8:18 15th 5:3 192-170-080 4:6 192-170-080(1)(a) 3:25 4:5</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>20-10-072 2:17 2011 5:9 2020 2:2,11,17 8:12,18</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>360-628-1698 7:8</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 2:17</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>50.04.310 4:4 507-7853 6:17</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>622-0445 6:8,12 628-1698 7:5 8:2</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>750,000 4:14</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>867-8721 7:12</p>	<hr/> <p style="text-align: center;">9</p> <hr/> <p>929-9633 6:15,16 9:01 2:2,11 9:11 8:18,21</p> <hr/> <p style="text-align: center;">@</p> <hr/> <p>@agcwa.com 6:20</p> <hr/> <p style="text-align: center;">A</p> <hr/> <p>a.m. 2:2,11 8:18,21 absence 2:15 5:23 8:8 address 3:9,10 adjourned 8:17 Administrative 3:25 4:6 adopted 5:8 adoption 3:17 5:2 8:13 advised 3:11 agency's 3:16,22 agree 6:21 7:15 amount 4:20 and/or 5:9 appeared 2:3 approach 5:10 association 4:12,14 7:14 attendance 4:9 authority 2:9 AWB 6:22</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 7:11 based 3:7 5:7,8 Battles 4:10,11 6:6,21 7:15</p>	<hr/> <p>begin 4:10 beginning 2:11 behalf 8:16 benefits 2:15 8:7 Bob 4:11 6:21 7:15 Business 4:12</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C-A-T-H-E-R-I-N-E 7:20 call 3:7 8:2 call-in 4:22 called 3:8 case 5:12,15 Cat 7:13 Catherine 7:13,19 CATTELL 2:3 Certified 2:3 chamber 4:13 chance 7:24 change 4:16 5:12 6:1 circle 7:11 Code 3:25 4:6 comment 7:14 commenting 3:19 comments 3:18 4:24 7:16 8:11,15 Commissioner 2:22 4:1,3 8:16 concerned 4:17 concerns 4:15,24 5:1 6:3 Concise 3:16,20 conclude 8:5 concluded 8:21 conflict 4:3 conformity 5:20,25 considered 8:15</p>	<hr/> <p>contact 6:11,19 continuing 3:6 Contractors 6:19 convened 2:10,14 3:13 8:6 conversations 4:21 Coordination 3:2 Coordinator 2:20 couple 4:16 court 2:3 6:24 7:18 8:20 COVID-19 5:5</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>date 5:2 deadline 8:11 decision 4:2 5:8 8:13 delivery 2:18 Dental 6:19 Department 4:2,4 Department's 2:18, 21 determined 4:1,3 direct 4:3 Dixie 2:2 3:4 8:19 Due 2:11 Dye 2:8,19 3:3,6 6:5, 13,17,23 7:2,5,7,10, 17,21 8:1,4</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-mail 3:9 6:20 effect 4:7 electronic 2:18 emergency 5:7,10 employ 4:14 employee 5:17 employees 4:15</p>
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