

2015

**Kenneth L. Gray Petitioner, v. Workforce Appeals Board of the
Utah Department of Workforce Services and State of Utah,
Respondents.**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

KENNETH L. GRAY.

Petitioner,

v.

WORKFORCE APPEALS BOARD,
DEPARTMENT OF WORKFORCE
SERVICES, DEPARTMENT OF
TECHNOLOGY SERVICES,
and the STATE OF UTAH

Respondent.

REPLY BRIEF OF APPELLANT

Case No. 20150420-CA

Reply Brief of Appellant to
Brief of Respondent (August 10, 2015)

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pro se Petitioner

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FILED
UTAH APPELLATE COURTS

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction of this appeal under Utah Code Section 35A-4-508(8)(a).

REPLY REGARDING FIRST ARGUMENT

Should benefits be allowed because of extenuating extreme circumstances? Officials of DWS made an egregious mistake, which they admit, and which was extremely damaging and harmful to Petitioner and his family.

. . . If there are mitigating circumstances, and a denial of benefits would be an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant: (a) acted reasonably . . . (b) demonstrated a continuing attachment to the labor market.

Utah Administrative Code R994-405-103 Equity and Good Conscience

A UI claimant has a continuing relationship with the Department of Workforce Services (DWS). As required pursuant to R994-405-103, a claimant must demonstrate “a continuing attachment to the labor force.” Claimants are required to document four job applications a week; likewise DWS has continuing obligations to the claimant, i.e. maintain job boards, conduct seminars, assist in job searches, etc. However, a few weeks after Petitioner began receiving weekly UI payments, DWS made a careless mistake that destroyed Petitioner’s once-in-a-lifetime, six-figure, job offer. (*See Exhibit A*)

After an intensive daily job search for months to no avail, Petitioner received an excellent job offer to begin work June 7, 2015, if he could obtain a security clearance for a federal defense installation. (*Exhibit A*) However, it was then learned that immediately following the Workforce Appeals Board Hearing, DWS filed a warrant and a lien judgment on Petitioner’s property with the Third District Court, Salt Lake County, State of Utah. (*Exhibit B*)

Petitioner was told that the warrant and lien judgment were filed electronically by a computer and could not be retracted. The document (*Exhibit B*) indicates the warrant and

lien judgment were filed on 05-13-15, just 13 days after the Board made its decision. It states, "Filed judgment: DWS Delinquent Unemployment Benefit Overpayment."

The Workforce Appeals Board (the Board) had instructed Petitioner in writing that he had a right to appeal their decision to this Court, and Petitioner was barely into the process of filing that appeal when the warrant and lien judgment were filed. They were filed long before the statute of limitations for filing the appeal with this Court expired.

Upon filing his appeal, Petitioner contacted the staff at the Utah Court of Appeals and was informed that they had instructed DWS to stop all collection activities. Petitioner then contacted the DWS and demanded the removal of the warrant and lien judgment based on the instructions given them by the staff at the Utah Court of Appeals. The DWS official glibly told Petitioner they had stopped all collection activity but had no intentions of removing the warrant or lien judgment. Petitioner tried to explain that the mere existence of the warrant or lien judgment constituted a very damaging "collection activity" and must be removed so Petitioner could pass the security clearance needed for the job offer he had received. The DWS officer was not moved.

Petitioner was informed in July by a DWS employee (Steve 801-536-9919) that the warrant and lien judgment had been filed by mistake. Steve assured Petitioner the warrant and lien judgment would be immediately removed, but they were not.

The job offer was lost due to this negative public record that DWS refused to remove for several months. The ultimate outcome has been severe misery for Petitioner and his family. The impact of this action did not occur until after the Brief of Appellant was filed, so this damaging mistake by DWS could not have been included in the Brief of Appellant.

Sometime after the Brief of Appellant had been filed, Petitioner learned that DWS had assigned attorney Suzan Pixton to the case. Petitioner sent Ms. Pixton a letter and email to inform her of the situation. (Exhibit C).

Ms. Pixton arranged for the immediate removal of the warrant and lien judgment, and it was finally withdrawn. The withdrawal filed by DWS includes the admission by DWS that the warrant and lien judgment were filed by mistake as it states, "It . . . has been determined, the warrant was filed in error." (Exhibit D) It was not until sometime later that the public record was removed from the records of credit bureaus. The posting of the warrant and lien judgment in federal records is a stigma that will never be erased.

Why should this malevolent and flagrant damage done by DWS be compounded by a denial of UI benefits, especially since DWS caused the unemployment from June 7, 2015, to the present? This mitigating circumstance may have a lifetime impact and is grossly unfair.

Petitioner therefore moves the Court to grant summary judgment in favor of Petitioner to help mitigate, to mollify the extreme damage done to petitioner and his family.

REPLY REGARDING SECOND ARGUMENT

Should benefits be allowed because of extenuating circumstances apparently designed and intended to give Respondent an unfair advantage in this case? Respondent refused and failed to marshal evidence for a fair hearing.

In the Brief of Respondent, Respondent claimed that Petitioner had not met the burden of providing the needed evidence for a fair trial. (Brief of Respondent, p. 33, ¶ 3). Actually, there is a serious failure to marshal the evidence needed for a fair hearing in this case, but that failure is the fault and/or the strategy of Respondent, not Petitioner.

When Petitioner was forced to resign he gave four weeks notice so he could complete projects in progress, secure permission to collect copies of past emails he might need for future reference, and for financial reasons, i.e. allow time to secure a new job. However, as soon as management received his letter of resignation, his computer was immediately locked; he was ordered to leave the premises and was promptly escorted to the door. He was ordered to take nothing with him except personal items. When he asked that his supervisors assemble copies of his last six weeks of emails and mail them to him, they refused.

Respondent failed to provide copies of the emails exchanged in December 2014 and January 2015, so the ALJ and the Board were forced to depend almost entirely on the verbal testimony of the six participants Respondent sent to the ALJ hearing. Petitioner was alone at that hearing, and he had no access to the email evidence he needed. Respondent is the custodian of those emails.

Copies of the emails exchanged between Petitioner and his supervisors and co-workers, for a short period in December 2014 through January 7, 2015 are imperative for a fair hearing in this case. Emails from no other dates are needed. No one previously had expressed any criticism of Petitioner whatsoever, not verbally or in writing. All criticism of Petitioner occurred immediately after he filed an age discrimination complaint.

When an attorney was assigned to represent Respondent, Petitioner sent her the following "Request for Documents" (Exhibit E):

1. Provide electronic copies of all emails that Petitioner exchanged with the Department of Technology Services (DTS) staff or management, dated in December 2014 and January 2015.
2. Provide these (easily accessible) archived documents within five (5)

days of today preferably by email sent to Petitioner. . . .

Ms. Pixton responded immediately by email stating that she would not ask her client to provide any such documents. Ms. Pixton falsely stated, “We [Respondent] have provided you with all of the evidence we have.” (Exhibit F) It is ironic that Ms. Pixton, who had a chance to encourage her client to correct its failure to marshal and share the needed evidence, now claims that Petitioner failed to marshal the very critical evidence that she refused to obtain from her client!

Finally Petitioner filed a GRAMA request to Respondent. On August 14, 2015, Petitioner received the documents he needed to prevail in a fair hearing, but most of the litigation was over. (One of the 167 emails was located before the GRAMA request was fulfilled and that email was referenced in the Brief of Appellant and was attached thereto.)

The courts have made it clear that a party that fails to marshal the needed evidence, or has prevented the marshaling of the needed evidence, as required for a fair hearing, will not prevail in an appeal hearing. For example, in the case of *Target Interact US, LLC v. Workforce Appeals Board*, this Court ruled that the employer failed to marshal the needed evidence, for use on appeal, which failure alone was grounds for ruling against Target.

[W]e note that Target’s briefing is deficient in several respects Of particular concern is Target’s failure to marshal the evidence in support of the Board’s decision. . . . Target’s failure to marshal the evidence in support of the Board’s decision impermissibly shifts the burden of combing the record for supporting evidence onto this court.

[concurring opinion] I concur in the result and in that portion of the memorandum decision concluding that Target’s briefing does not satisfy the requirements of rule 24 of the Utah Rules of Appellate Procedure. . . . I would affirm on the ground that they are inadequately briefed.

Target Interact US, LLC v. Workforce Appeals Board, 2010 UT App 255.

In the present case, a fair hearing was impossible without the email evidence that Respondent refused to produce. It was not until August 14, 2015, that Petitioner was able to secure the needed evidence as the result of a GRAMA request, which consists of 167 emails. Exhibit G (the complete set of emails is now available but not included in Exhibit G).

“[Failure] to marshal the evidence in support of the Board’s decision [is impermissible].”

(*Target*) Therefore, summary judgment should be granted for Petitioner.

REPLY REGARDING THIRD ARGUMENT

Was the testimony of Jake Payne impeachable?

Respondent claims the Court should not consider an argument regarding Jake Payne’s alleged impeachable testimony because the argument was not preserved testimony from the previous Board appeal. (Brief of Respondent, p. 23, ¶ 2) However, Respondent’s failure to marshal the needed evidence that proves Jake Payne’s testimony was false and misleading was not available for presentation in the Board appeal. (*See* Second Argument)

The most misunderstood factor in this case has been the misunderstanding by the ALJ and the Board of the difference between “database monitoring” and Jake Payne’s new spreadsheet (“Jake’s spreadsheet”). Database Administrators (DBAs) monitor database health and problems at all hours, day and night. This requires virtually no typing. Internal analytical charts are reviewed by the DBAs and they may take a few notes or print a screen for use in solving any observed problems. Petitioner has been doing this activity for 20 years, including for eight months with DTS with no complaints.

Jake Payne decided he wanted to keep track of Petitioner’s monitoring activities more

closely, so he created an on-line spreadsheet and instructed Petitioner to use it in the following manner: (1) Petitioner must make a detailed note of every line item in the charts he reviews each day—whether they indicate a problem or not, (2) Petitioner must type a detailed description of each line item reviewed into the “description field” of Jake’s spreadsheet, and (3) Petitioner must type the date and time next to each of the several hundred descriptive lines as those descriptions are typed. DBAs do not monitor databases as described above; nor do they maintain a spreadsheet as designed by Jake Payne.

In the Brief of Respondent, Respondent wrote, “He [Jake Payne] found that putting a time stamp on completed tasks would require the Claimant to type an average of 550 extra characters per day.” (Brief of Respondent, p. 6. ¶ 1 *emphasis added*) It is the “completed task” that takes two to four hours. As Respondent admits, “the 550 characters per day” refers to adding dates to the previously typed description of the item that is reviewed. There is no such thing as needing to fill the date field in Jake’s spreadsheet before an item description is typed.

Thus, all three of the following findings by the Board are erroneous as they are based on the false assumption that the new daily typing task took only 550 characters:

Board Finding: While it is true he had a letter from his doctor, there is other evidence in the file that shows the Claimant does type and 550 characters per day is not excessive given his job.

Board Finding: Typing 20 to 30 minutes a day, or an average of 550 key strokes, does not involve “prolonged repetitive movements” nor does it involve typing for an extended period of time.

Board Finding: Typing 20 to 30 minutes did not create a hardship.

Decision of Workforce Appeals Board, *Record of Index*, p. 181, ¶¶ 1-3.

In a recently obtained email, Jake Payne admits the “complete new task” takes far more than 550 key strokes: it requires at least two hours of prolonged typing.

Yesterday I sent you [Petitioner] this assignment so that I could ensure that we had a framework in place for the documentation of our routine DBA responsibilities. . . .

I would like you to start on your daily assignments today on the DBA activity log as soon as you received this email, if you have not already started. Normally this will be easily completed before 9:00 a.m. [Petitioner started work at 7:00 a.m.—making this a two hour daily typing task.]

The Brief of Appellant, Exhibit A.

Of course, Petitioner had been doing the all day periodic monitoring for eight months, so the order to “start on the daily assignments today” did not refer to monitoring work. Jake Payne was referring to the new two-hour typing task.

The confusion in this entire matter arose because Jake Payne purposely gave misleading testimony in the ALJ hearing, as follows:

I don’t really agree that it’s data entry, but the entire amount of – of characters that would be required to be entered in a day approximates 550.

Payne’s testimony, *Record of Index*, p. 170, *Reporter’s Transcript*, p. 43, ¶ 1.

The actual filling out of the spreadsheet itself, again, uh – 550 characters on average, uh, so absolutely it does not take two hours to do 550 characters of – uh, in the spreadsheet.

Payne’s testimony, *Record of Index*, p. 170, *Reporter’s Transcript*, p. 48, ¶ 1.

The ALJ and the Board showed a preference for Jake Payne’s false testimony that the new assignment required only “550 key strokes” a day for all the typing, not realizing that is not true, but Jake Payne wanted them to believe that. That figure, 550 key strokes, came from the fact that only one small part of the new task, adding dates, took 550 key strokes, and it was misapplied to the

whole typing task. The real daily typing assignment, two to four hours a day, is far outside of the recommendations of Petitioner's physician—and is far outside the job description of a DBA.

Mr. Gray has a long term condition of osteoarthritis in his hands, fingers, and wrists which make prolonged repetitive movements of his fingers, hands and wrists contraindicated. Such activity can increase pain, swelling, and stiffness of the joints, promote loss of flexibility and worsen the condition. It is recommended that Mr. Gray strictly avoid prolonged repetitive movements of his hands, fingers and wrists, such as is involved in typing for extended periods.

Physician's Statement, *Record of Index*, Exhibit 28.

REPLY REGARDING FOURTH ARGUMENT

Was Petitioner denied his Constitutional right to due process?

Respondent claims that this Court should not consider the Constitutional due process issue because the issue was not substantially argued before the Board and was therefore not a "preserved issue." (Brief of Respondent, p. 23, ¶ 2)

[T]here are other important considerations that cut against application of the preservation rule in this situation. . . . We should not be forced to ignore the law just because the parties have not raised or pursued obvious arguments [previously]. *emphasis added*

Patterson v. Patterson, No. 20100011, 266 P.3d 828 (2011).

In the Brief of Respondent, Respondent presents a new argument that there is a material difference in accusing and prosecuting a claimant for "fault" rather than for "fraud." (Brief of Respondent, p. 25, ¶ 1) This splitting of hairs regarding the terminology is meaningless. A warrant and lien judgment were issued against Petitioner because of the ALJ's allegation that Petitioner was guilty of "fault" or "fraud" or both, (Exhibit B and D)

which created a stigma that prevented a once-in-a-lifetime career appointment. Petitioner's property rights in his property, potential income and employment were denied without due process of law.

In the warrant and lien judgment in the Third District Court, Salt Lake County, State of Utah, DWS avoids using the term "fault" or "fraud"; the documents indicate what they are—a "warrant," "lien" and "judgment"! *See* Exhibit B and D. It is an egregious error in Petitioner's otherwise commendable public record, falsely indicating there is a warrant and lien judgment against Petitioner because he is guilty of wrongdoing in a State of Utah agency. Even when officially removed by the Court, the record still can be found in outdated credit reports, other compilations and on the Internet.

In other words, the ALJ believes that as a State of Utah official, he can conduct a hearing, and based on his interpretation of the testimony given in that hearing he can (1) accuse Petitioner of fraud or "fault," (2) rule that Petitioner is guilty of fraud or "fault," (3) levy a fine, (4) issue a warrant against Petitioner, and (5) place a lien judgment on Petitioner's property, all with no due process of law. This is clearly an abuse of authority that must be corrected. This behavior is so far out-of-touch with the law of a constitutional democracy and republic that it is shocking to anyone who believes in the freedoms inherent in living in the United States of America. Denials of due process while an agency makes claims for "fraud" or "fault" must be defeated by this Court.

The warrant and lien judgment filed in Third District Court, Salt Lake County, State of Utah, is absolutely illegal under the Fourteenth Amendment:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
emphasis added

Constitution of the United States of America, Amendment XIV

The ALJ's claim that Petitioner gave false testimony in order to receive money is a criminal accusation by definition. Respondent should have understood that DWS's immediate and aggressive issuance of a warrant and lien judgment against Petitioner based on nothing more than the decision of one ALJ judge on one day was a violation of Petitioner's right to due process.

In his decision, the ALJ wrote:

Fault is established if the Claimant incorrectly received benefits based on providing incorrect information or an absence of information that the Claimant could have reasonably provided and the Claimant had sufficient notice that the information might be reportable.

Decision of Administrative Law Judge, *Record of Index*, p. 161, ¶ 3.

This is precisely the same as the legal definition of fraud:

In law, fraud is deliberate deception to secure unfair or unlawful gain. Fraud is both a civil wrong (i.e., a fraud victim may sue the fraud perpetrator to avoid the fraud and/or recover monetary compensation) and a criminal wrong (i.e., a fraud perpetrator may be prosecuted and imprisoned by governmental authorities). The purpose of fraud may be monetary gain or other benefits, such as obtaining a drivers license by way of false statements.

<https://en.wikipedia.org/wiki/Fraud>

In the United States of America, no one can be accused and prosecuted for fraud, even if the accusing party changed the label of the accusation, without due process of law. The choice to use the term "fault" to describe the allegation and prosecution is cosmetic, not

substantial or legal. The ALJ's actions in the absence of due process of law is blatantly unconstitutional. This blindly exercised denial of due process by State officials is an egregious abuse of authority and must be overturned.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Constitution of the United States of America, Amendment VI

REPLY REGARDING FIFTH ARGUMENT

Was Angela Abbott a statutorily unqualified witness?

Respondent claims the Court should not consider arguments regarding this unqualified witness because Petitioner had not previously notified the Board that the witness in question was not qualified to testify. (Brief of Respondent, p. 23, ¶ 2) However a party is entitled to notify any court at any time that a witness is not qualified to testify. This is a procedural matter and has no relationship to preserving testimony.

Ms. Abbott did not meet the minimum requirement to testify against or for Petitioner, as follows: "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." (*Utah Rules of Evidence*, Rule 602. *Need for Personal Knowledge*.)

Respondent cites *U.C.A.* §63G-4-206(1)(d) to claim that any party can testify at an ALJ hearing. However, like Rule 602, this section also states the proviso that the party must "present evidence." "[The ALJ] shall afford to all parties the opportunity to present

evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.”

Ms. Abbott could not and did not “present evidence” because she had no personal knowledge. Respondent also cites §63G-4-206(1)(c) which states that the ALJ “may not exclude evidence solely because it is hearsay.” The key word here again is “evidence.” Ms. Abbott had no hearsay or other evidence to present, but stated the following:

Regarding this case, the job description [daily duties] that Mr. Gray was given did not change since the day he was hired. What his expectations of the job were, were consistent throughout his employment. He was not assigned clerical work. He was assigned routine DBA-related uh. tasks and he did not want to perform them.

Abbot’s testimony, Record of Index, p. 170, Reporter’s Transcript, p. 71.

Ms. Abbot had no personal knowledge that the daily duties had not changed or when they changed; she had no personal knowledge regarding Petitioner’s expectations; she had no personal knowledge of whether or not Petitioner was assigned clerical work, and she certainly did not know what Petitioner wanted to “perform” as an employee. Except for one meeting which both attended, she had no contact with Petitioner. She was an outsider.

REPLY REGARDING SIXTH ARGUMENT

Did Petitioner Resign for Good Cause?

In the Brief of Appellant the facts and the law that accurately explain why Petitioner resigned for good cause are discussed in detail. In addition, the ALJ and the Board wrongly stated that Petitioner did not attempt to reach an agreement with the agency to prevent the resignation.

[E]ven if it was established that the Claimant would experience a hardship because of a medical issue, he failed to exhaust his alternatives to quitting.

Decision of Administrative Law Judge, *Record of Index*, p. 59, ¶ 2.

This is false, as is demonstrated by the following email (that was not available until it was recently obtained via a GRAMA request (*See Second Argument herein*)). Exhibit G

[To Jake Payne and David Burton] Due to arthritis. . . I cannot participate in Jake's recent plan to assign to me increased and excessive non-DBA daily clerical work. However, I am an expert Apex programmer, and I would be glad to program Jake's spreadsheets into a system that requires no data entry. It wouldn't take long to do this. We also have the latest Oracle monitoring tools already installed on all the UDOT databases that require no data entry. These are not currently in use even though UDOT paid for the license to use them. —Kenneth Gray

Neither Jake Payne nor David Burton responded to this email. Their steadfast stubbornness, even in light of a pressing need to be cooperative, caused Petitioner to resign for good cause.

CONCLUSION

A. An egregious admitted mistake by DWS caused Petitioner to be unemployed from June 7, 2015, to the present (perhaps much longer) and also caused the loss of a choice once-in-a-lifetime career opportunity. Officials of the Utah agency (DWS) entrusted with the responsibility to promote employment, instead, due to gross negligence, destroyed Petitioner's pending employment. (Exhibit A) Petitioner is therefore entitled to prevail in this case.

B. Despite numerous requests, Respondent's refusal and failure to marshal and share critical data (emails), for which they are the custodian, prevented a fair hearing and fair reviews of critical evidence. "[Failure] to marshal the evidence in support of the Board's decision [is impermissible]." *Target Interact US, LLC v. Workforce Appeals Board*, 2010 UT App 255. Petitioner is therefore entitled to prevail in this case.

C. The testimony of Respondent's key witness, Jake Payne, is impeachable, because he purposely mislead the ALJ with false statements, resulting in three blatantly false findings by the ALJ and the Board. Those findings are demonstrated to be false by comparing Jake Payne's testimony with recently obtained physical evidence (emails). (*See* Third Argument herein) Petitioner is therefore entitled to prevail in this case.

D. The false belief that any State of Utah official or agency can conduct a hearing and then unilaterally (1) accuse Petitioner of obtaining money by deceit, (2) rule that Petitioner is guilty of fraud or "fault," (3) levy a fine, (4) issue a warrant against Petitioner, and (5) place a lien judgment on Petitioner's property, all without due process of law, is a gross violation of rights guaranteed to every citizen by the *United States Constitution*, under Amendments VI and XIV. Petitioner is therefore entitled to prevail in this case.

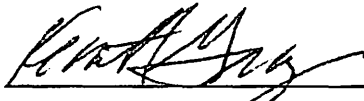
E. Respondent recruited a witness to testify who had no personal knowledge of the facts of the case and could not and did not introduce any evidence to support what was nothing more than the damaging opinion of an outsider. "A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." *Utah Rules of Evidence*, Rule 602. *Need for Personal Knowledge*, *U.C.A.* §63G-4-206(1)(c-d) Petitioner is therefore entitled to prevail in this case.

F. Petitioner was required to do a new two to four hour task he could not do for health reasons. (*See* Physician's Statement, *Record of Index*, Exhibit 28) His supervisor would not respond to any suggestions for how to get the same results without prolonged clerical typing (*See* Exhibit G, p. 36, herein). Finally, Petitioner gave a four-week notice in hopes he could obtain other employment while no additional accusations against him would

be recorded by Respondent, but Respondent aggressively forced him to leave the premises immediately. Petitioner is therefore entitled to prevail in this case.

Thus, the six above cited reasons, collectively or each one separately, provide overwhelming facts and law that conclusively establish Petitioner's right to prevail in this case. Petitioner moves the Court to grant the benefits denied by DWS.

Dated this 25th day of August, 2015,


Kenneth L. Gray

ADDENDUM

Exhibit A

Job Offer dated June 3, 2015 (confidential)



1728 East 1180 South, Suite 240
Ogden, UT 84015

CONFIDENTIAL!

June 3, 2015

Mr. Kenneth L. Gray
P.O. Box 708244
Sandy, UT 84070-8244

Dear Mr. Gray:

I am pleased to offer you employment in the position of Oracle Database Specialist with Woodbury Technologies, Inc. Your primary area of responsibility will be to support the mission of Defense Information Systems Agency/SMC Ogden at Hill Air Force Base, Utah. You are required to follow all government laws, policies, and regulatory requirements. Your tentative start date is expected to be Tuesday, June 9, 2015.

This letter is to review various aspects of your employment with the Company. I am excited about the prospect of your joining our team. I trust that the Company can provide you with opportunities for professional and personal growth.

Your employment is contingent upon a positive background check for you, a top secret clearance, and your satisfactory completion of all standard hiring requirements and procedures, initially and subsequently as required by the contract, including verification of application and resume information and employment/personal references, verification of licensure (where appropriate), completion of a federal I-9 form and providing verifying documents. This includes acceptance of your resume and qualifications by the government. You will also need to pass the Security+ exam within 30 days of your hire date.

Your starting annual salary is \$102,000.00 in an exempt, salaried contract position. You will be eligible to participate in the company's medical, dental, vision, life, and 401k plans. You will receive 15 days (120 hours) of paid time off, which includes both vacation and sick leave. Paid time off accrues each semi-monthly pay period at the rate of 5.00 hours. In addition you will have 10 federal government holidays.

Mr. Kenneth L. Gray
Offer Letter – Page Two

Employees of the Woodbury Technologies, Inc. are hired and employed at-will. As an at-will employee, you may cease your employment at any time or be released by the Company without notice or requirement of cause. Nothing contained in this letter will constitute as an employment contract or affect your at-will employment status.

I am pleased to welcome you to the company. Upon acceptance of this offer, please sign and submit a copy of this letter. Please don't hesitate to call if you have any questions.

Sincerely yours,

Michael R. Wiemer
Human Resources Manager
Woodbury Technologies, Inc.
Cell 801-725-3526
Fax 801-773-2722

I accept this offer and the conditions of employment as specified above.

Kenneth L. Gray

Date

Exhibit B

Lien Judgment mistakenly created and filed by DWS

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

WORKFORCE SERVICES vs. KENNETH L GRAY

CASE NUMBER 156912018 Workforce Svc Lien

CURRENT ASSIGNED JUDGE

TODD M SHAUGHNESSY

PARTIES

Plaintiff - WORKFORCE SERVICES

Defendant - KENNETH L GRAY

ACCOUNT SUMMARY

PROCEEDINGS

05-13-15 Case filed

05-13-15 Note: discovery tier set to Exempt

05-13-15 Judge KATE TOOMEY assigned.

05-13-15 Filed judgment: DWS Delinquent Unemployment Benefit Overpayment

Clerk EFILER

Signed May 13, 2015

05-13-15 Judgment #1 Entered \$ 992.00

Creditor: WORKFORCE SERVICES

Debtor: KENNETH L GRAY

992.00 Total Judgment

992.00 Judgment Grand Total

05-13-15 Case Disposition is Judgment

Disposition Judge is KATE TOOMEY

05-22-15 Judge TODD M SHAUGHNESSY assigned.

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

WORKFORCE SERVICES	:	CASE HISTORY
Plaintiff,	:	
	:	
	:	
vs.	:	Case No: 156912018 WL
	:	
KENNETH L GRAY	:	Judge: TODD M SHAUGHNESSY
	:	
Defendant.	:	Date: Jul. 17, 2015

CASE INFORMATION

Case Filed: May 13, 2015
Judge: TODD M SHAUGHNESSY

Exhibit C

Request for removal of mistakenly created Lien Judgment

Kenneth L. Gray, Ph.D.
PO Box 708244
Sandy, UT 84070
801-572-2434

July 17, 2015

Noelle Bradford
Collection Manager
Utah Department of Workforce Services
PO Box 45288
Salt Lake City, UT 84145
Telephone: (801) 526-9235

Suzan Pixton #2608
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P. O. Box 45244
Salt Lake City, Utah 84145-0244
spixton@utah.gov

Dear Ms. Bradford and Ms. Pixton,

I am the Petitioner in case # 20150202-CA, currently before the Utah Court of Appeals. I am writing to you now because DWS has presumed they will prevail in that appeal, as they have refused to wait for the results. DWS has failed to reverse a collection activity that has and is causing immense damage to my ability to find work.

Please be advised that the order from the Utah Court of Appeals given to DWS, to cease and desist all collection activity while the matter is on appeal, must be strictly obeyed. DWS must be in compliance with the letter and purpose of that order. This includes reversing collection activities that were in progress when the appeal was filed with the Utah Court of Appeals. The purpose of that order is to prevent unwarranted damage to a petitioner.

It is doubtful DWS had a legal right to engage in collection activities before expiration of the statute of limitations for filing an appeal with the Utah Court of Appeals, especially since the written decision by the Workforce Appeals Board included a notice of that right of appeal! Regardless, the fact that DWS has thus far failed to reverse this hostile, destructive act necessitates immediate corrective action.

On June 3, 2015, I received a written offer of employment from a major Utah corporation "contingent upon a positive background check . . . [for] a top secret clearance." I accepted the offer; however, soon thereafter I received a letter indicating that DWS had filed a lien against me. Any such judgment is a significant "negative factor," so the background investigation was placed in a "pending" status.

I telephoned the collection office at DWS and spoke to "Steve" at 801-526-9919 and explained the critical nature and urgency of the matter. He talked to his supervisor while I waited on-line, presumably the Collection Manager. He informed me they had discovered my case was accidentally divided into two cases and that caused a premature filing of a lien with no advanced notice to me. Steve indicated the lien would be removed immediately. I called back a few days later, and Steve assured me the lien had been removed. (See attached letter.) However, since my security status has remained in a "pending status," I contacted the Court today and learned that the lien had never been removed. (Attached.)

Next week, I will be attending an interview for another position that requires a security clearance. I expect you will act immediately to prevent a reoccurrence of this damaging and unjustified situation. Please let me know your intentions without delay. I am still unemployed which doesn't help any of us.

I worked as Supervising Labor Market Economist for Job Service (DWS) for six years, and our focus then was to help customers find jobs—not to destroy lives because of calloused unwarranted acts.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth L. Gray". The signature is fluid and cursive, with the last name "Gray" being more prominent.

Kenneth L. Gray, Ph.D.
801-572-2434
klg@votermetrics.com

Exhibit D

DWS's withdrawal of the Lien Judgment and Warrant

DWS-UIC
Form: BOP741A
Rev: 0813

5915
1002417804

To the THIRD DISTRICT Court Clerk for SALT LAKE County, State of Utah:

WHEREAS, under date of 5/13/2015, the Utah Department of Workforce Services did issue a warrant to levy upon the real and personal property of **KENNETH L GRAY** of SALT LAKE County, State of Utah, or so much thereof as might be necessary for the payment of the sum of **\$992.00** delinquent unemployment benefit overpayment and penalty assessed against said individual pursuant to the provisions of Utah Code Chapter 35A-4-305, and entered in judgment docketed on 5/13/2015, Case # 156912018; and

WHEREAS, it has since been determined, the warrant was filed in error.

NOW, THEREFORE, said claim is hereby withdrawn and discharged, and you are hereby authorized and instructed to withdraw and release the lien of said judgment upon the records of your office.

Dated at Salt Lake City, Utah, this 21st day of July, 2015.

Utah Department of Workforce Services

This is a true copy of the original document, which has been digitally signed and electronically filed.

By:

/s/Noelle Bradford
Noelle Bradford, Collection Manager
PO Box 45288
SALT LAKE CITY, UT 84145
Telephone: (801) 526-9235

Exhibit E

Request to Respondent to marshal critical evidence

IN THE UTAH COURT OF APPEALS

KENNETH L. GRAY,

Petitioner,

v.

DEPARTMENT OF WORKFORCE
SERVICES, WORKFORCE APPEALS
BOARD and STATE OF UTAH

Respondents.

REQUEST FOR DOCUMENTS

Case No. 20150202-CA

Appeal from the Decision of the
Workforce Appeals Board Dated April 30, 2015

Kenneth L. Gray, Ph.D.
P.O. Box 708244
Sandy, UT 84070-8244
pro se Petitioner

Suzan Pixton #2608
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P. O. Box 45244
Salt Lake City, Utah 84145-0244
Attorney for Respondent

TO THE RESPONDENTS:

REQUEST FOR DOCUMENTS

1. Provide electronic copies of all emails that Petitioner exchanged with the Department of Technology Services (DTS) staff or management, dated in December 2014 and January 2015.

2. Provide these (easily accessible) archived documents within five (5) days of today preferably by email sent to Petitioner.

3. This request need not be filed with the Court by either party. This request is to correct Respondent's failure to put this evidence in the record previously, but it will be added to the official record only if needed in the future.

DATED this 20th day of July, 2015.



Kenneth L. Gray

DELIVERED TO THE FOLLOWING ON JULY 20, 2015:

Suzan Pixton #2608
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P. O. Box 45244
Salt Lake City, Utah 84145-0244
Attorney for Respondent

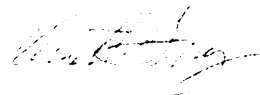


Exhibit F

Respondent's refusal to marshal critical evidence

Kenneth L. Gray

From: Suzan Pixton [spixton@utah.gov]
Sent: Tuesday, July 21, 2015 2:53 PM
To: Kenneth L. Gray
Subject: Re: REQUEST FOR DOCUMENTS NEEDED WITHIN FIVE DAYS

We have provided you with all of the evidence we have. If you want additional evidence, jurisdiction is now in the Court of Appeals, not the Department.

On Tue, Jul 21, 2015 at 2:27 PM, Kenneth L. Gray <klg@votermetrics.com> wrote:

Request for Documents attached.

Thank you.

Kenneth L. Gray, Ph.D. OCA

Exhibit G

Critical evidence as finally produced on August 14, 2015



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

**Department of
Technology Services**

Mark VanOrden
CIO
Executive Director

August 5, 2015

Kenneth Gray
P.O. Box 708244
Sandy, UT 84070

Mr. Gray:

We received your GRAMA request on July 28, 2015. I have been working with the IT staff to get the information you are requesting. Because of the volume of emails we need to go through to sort out what you are requesting, this is an extraordinary circumstance which allows us to extend the time needed to fulfill your request. I estimate that it will take me until Friday, August 15th, to get the information together.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Larene Wyss".

Larene Wyss
HR Director

Subject: Re: Chart and Slide Show

From: "Kenneth Gray" <kgray@utah.gov>

Sent: 1/9/2015 8:11:00 AM

To: "David Burton" <dburton@utah.gov>; "Larene Wyss" <lwys@utah.gov>; "Jake Payne" <jakepayne@utah.gov>

Due to arthritis, and for other reasons recently filed with UALD, I cannot participate in Jake's recent plan to assign to me increased and excessive non-DBA daily clerical work. However, I am an expert Apex programmer, and I would be glad to program Jake's spreadsheets into a system that requires no data entry. It wouldn't take long to do this. We also have the latest Oracle monitoring tools already installed on all the UDOT databases that require no data entry. These are are not currently in use even though UDOT paid for the license to use them.

Exhibit H
Certificate of Compliance

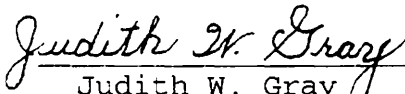
Exhibit I
Certificate of Service

CERTIFICATE OF COMPLIANCE

I have measured the number of words in this Brief of Appellant and, using the word counter in WordPerfect, and I determined that it consists of 4,900 words.

This count includes the entire document; Addendum, Exhibit A, excluded.

Dated this Aug. 26 , 2015.




Judith W. Gray

PO Box 708244
Sandy, Utah 84070

CERTIFICATE OF SERVICE

I, Kenneth L. Gray hereby certify that on 8/29 , 2015 I served two copies of the foregoing Appellant's Brief upon the parties listed below by mailing it by first class mail to the following addresses:

Suzan Pixton #2608
Workforce Appeals Board
Department of Workforce Services
140 East 300 South
P. O. Box 45244
Salt Lake City, Utah 84145-0244



Kenneth L. Gray