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IN THE SUPREME COURT OF IOWA
NO. 18-0981

TERESA L. SLADEK,
Appellant,

v.

EMPLOYMENT APPEAL BOARD
and KELLY SERVICES USA LLC,
Appellees.

On Appeal from the Iowa District Court for Johnson County,
Sixth Judicial District of Iowa, The Honorable Chad Kepros
Johnson County Case No. CVCV079516

FINAL BRIEF FOR APPELLANT

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ROUTING STATEMENT

This appeal presents a substantial question of first impression and should be retained by the Supreme Court pursuant to Iowa R. App. P. 6.1101(2)(f). The appellant, Theresa Sladek, was employed by a temporary employment firm, Kelly Services USA LLC and placed with one of the firm's clients, ACT. Kelly Services notified Ms. Sladek that it was terminating her placement upon the request of ACT. Ms. Sladek's subsequent application for unemployment benefits was denied based on a determination that she had voluntarily quit her employment. This conclusion was based on the agency's interpretation of Iowa Code § 96.5(1)(j), a provision of the Iowa Employment Security Law specific to employees of temporary employment firms.

No Iowa appellate court has addressed the operation of Iowa Code § 96.5(1)(j). Moreover, the interpretation of this provision has the potential to affect thousands of individuals. According to the U.S. Bureau of Labor Statistics, presently there are roughly three million workers engaged in workplaces nationwide through temporary help services. *See* (https://data.bls.gov/timeseries/CES6056132001). The American Staffing Association reports that in 2017 there were almost 19,000 workers employed in Iowa as temporary help workers each week.

(https://americanstaffing.net/staffing-research-data/fact-sheets-analysis-staffing-industry-trends/staffing-statistics-by-state/). Many of these workers are likely to apply for unemployment benefits given the temporary character of the work that they are doing. The Supreme Court should clarify the respective obligations of the temporary employment firms and the individuals who work for them upon the completion of a temporary assignment.

STATEMENT OF THE CASE

Teresa Sladek ("Ms. Sladek") appeals a district court ruling on a Petition for Judicial Review which denied her request for relief and upheld the Employment Appeal Board ("EAB")'s decision. The district court affirmed the denial of unemployment benefits issued by the EAB.

On July 2, 2017, Ms. Sladek filed a claim for unemployment insurance benefits. *See* App. p. 21. Iowa Workforce Development ("IWD") denied her claim on July 31, 2017. App. p. 24. It determined that she had voluntarily quit her employment when she "failed to notify the temporary employment firm within three working days of the completion of [her] last work assignment." App. p. 24. Next, Ms. Sladek appealed the denial and participated in an in-person hearing with an Administrative Law Judge ("ALJ") on September 27, 2017. App. p. 36. The ALJ affirmed the denial of

unemployment benefits based on Iowa Code § 96.5(1) and Iowa Admin. Code r. 871-24.26(15) (2016). *See* App. pp. 60-63. Ms. Sladek appealed the ALJ's decision to the EAB on October 12, 2017. App. p. 64. On November 13, 2017, the EAB affirmed the denial of benefits and adopted the ALJ's decision. App. p. 66. On December 6, 2017, Ms. Sladek filed a Petition for Judicial Review in the Iowa District Court for Johnson County. The Iowa District Court for Johnson County issued a Ruling on Petition for Judicial Review on May 16, 2018 affirming the denial of unemployment benefits. Ms. Sladek filed a timely appeal of that decision.

STATEMENT OF THE FACTS

On December 15, 2015, Ms. Sladek signed an agreement ("the Agreement") with Kelly, a temporary employment firm, by which Kelly promised to place her on job assignments. App. p. 15. Kelly offered to Ms. Sladek three separate assignments which Ms. Sladek accepted and completed. App. pp. 40-42. Ms. Sladek's first assignment was at R. R. Donnelley, which started on January 5, 2016 and lasted for nearly three weeks. App. p. 40. Ms. Sladek's first assignment ended when Kelly's representative, Ms. Natalie Sands, called her and informed her of the termination of that assignment. App. p. 40. After Ms. Sladek was informed about the termination, she voiced her distress and concerns about losing her

employment. App. p. 40. Ms. Sladek told Ms. Sands that she would have to cancel her pre-paid vacation to take another assignment. App. p. 41. Ms. Sands responded to Ms. Sladek's concerns by advising her to take her vacation and promising her that she would place her on another assignment once she returned. App. p. 41. Ms. Sladek applied for and received unemployment benefits for the period after she returned from vacation until she accepted another assignment from Kelly. App. p. 41.

Ms. Sladek received and accepted an offer for her second assignment from Kelly about a month from the termination of her first assignment. *See* App. p. 41. On March 2, 2016, Ms. Sladek started her assignment as a document processor at ACT. App. p. 41. On May 22, 2016, Ms. Sladek completed her second assignment and informed Ms. Sands of the completion of her assignment by a phone call. App. p. 41. During the call, there was no discussion regarding reassignment. App. pp. 41-42. Again, Ms. Sladek applied for and received unemployment benefits while waiting for reassignment. App. p. 42.

Ms. Sladek received and accepted an offer for her third assignment from Kelly on July 11, 2016. App. p. 42. The third assignment was also at ACT, as a customer service representative. App. p. 42. Ms. Sladek worked in her third assignment for about one year. *See* App. pp. 42, 44. During that

time, and on multiple occasions, Ms. Sladek expressed to Ms. Staci Payne, her supervisor at Kelly, concerns about losing her assignment due to her "handle time" of phone calls being below expectations. App. pp. 42-43. Ms. Payne responded to Ms. Sladek's concerns by assuring her that she would place her in another assignment should her ACT assignment terminate. App. p. 43.

On June 28, 2017, Ms. Payne called Ms. Sladek and informed her of the termination of her assignment. App. p. 44. In that call, Ms. Sladek became upset about losing her employment and objected to the termination of her assignment. App. p. 45. Ms. Payne told Ms. Sladek that the termination was final and there was nothing more she could do. App. p. 39. Ms. Sladek ended the call when it became clear that she would not be able to keep her employment. App. p. 45.

On July 31, 2017, having heard nothing from Kelly, Ms. Sladek called Ms. Payne inquiring about job assignments. App. p. 45. Ms. Payne informed her that there were no available assignments at that time. App. p. 45. Ms. Payne said that summertime is "very slow." App. p. 45. Ms. Payne explained to her that assignments would start to be available again in the fall and spring. App. p. 45. Ms. Payne also informed her that she was not comfortable placing her in a new assignment due to the way she ended the

June phone call, but promised that she would contact her should an assignment become available. App. p. 45. Ms. Payne testified that she was aware that Ms. Sladek wanted to remain employed based on Ms. Sladek's conduct and history with Kelly. App. p. 48. Ms. Payne also testified that she did not know of any available assignments for Ms. Sladek at the time her ACT assignment ended. App. p. 48.

ARGUMENT

I. The EAB Erred in Concluding that Ms. Sladek Had Voluntarily Quit Employment with Kelly

A. Standard of Review and Issue Preservation

This issue has been preserved for appellate review through the Petition for Judicial Review and subsequent filings with the district court. This issue has been argued throughout the proceedings below. Ms. Sladek asserted that she did not quit during the hearing before the IWD. App. p. 21. Ms. Sladek continued asserting that she did not quit before the EAB. App. pp. 25, 27, 53; and Brief and Arg. in Support of Claimant's Appeal p. 4. Ms. Sladek also claimed before the district court that she did not quit.

Judicial review of the decision of administrative agencies is to be conducted according to the Iowa Administrative Procedure Act. Iowa Code § 17A.19. This Court applies the standards set forth in § 17A.19 (10) to determine whether the "application of those standards produce[s] the same

result as reached by the district court.*"* *Auen v. Alcoholic Beverages Division*, 679 N.W.2d 586, 589 (Iowa 2004).

The reviewing court has broad authority to grant appropriate relief of an agency's action if it determines that such action has prejudiced the substantial rights of the appellant. Iowa Code § 17A.19(10). Under Iowa Code § 17A.19(10):

> The court shall reverse, modify, or grant other appropriate relief from agency action, equitable or legal and including declaratory relief, if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is any of the following:
>
> * * * * *
>
> b. Beyond the authority delegated to the agency by any provision of law or in violation of any provision of law.
>
> c. Based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the agency.
>
> * * * * *
>
> f. Based upon a determination of fact clearly vested by a provision of law in the discretion of the agency that is not supported by substantial evidence in the record before the court when that record is viewed as a whole.
>
> * * * * *
>
> j. The product of a decision-making process in which the agency did not consider a relevant and important matter relating to the propriety or desirability of the action in question that a rational decision maker in similar circumstances would have considered prior to taking that action.

* * * * *

l. Based upon an irrational, illogical, or wholly unjustifiable interpretation of a provision of law whose interpretation has clearly been vested by a provision of law in the discretion of the agency.

m. Based upon an irrational, illogical, or wholly unjustifiable application of law to fact that has clearly been vested by a provision of law in the discretion of the agency.

n. Otherwise unreasonable, arbitrary, capricious, or an abuse of discretion.

Iowa Code § 17A.19(11) specifies that:

In making the determinations required by subsection 10, paragraphs "a" through "n", the court shall do all of the following:

a. Shall not give any deference to the view of the agency with respect to whether particular matters have been vested by a provision of law in the discretion of the agency.

b. Should not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency.

c. Shall give appropriate deference to the view of the agency with respect to particular matters that have been vested by a provision of law in the discretion of the agency.

The Supreme Court of Iowa has held that "the meaning of any statute is always a matter of law to be determined by the court." *Birchansky Real Estate, L.C. v. Iowa Dep't of Pub. Health*, 737 N.W.2d 134, 138 (Iowa 2007) (citing *City of Marion v. Iowa Department of Revenue & Finance*, 643 N.W.2d 205, 206 (Iowa 2002)). This Court has held that courts are not

bound by administrative agencies' interpretation of law if such interpretation is not prescribed by a provision of law. *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 185 (Iowa 2016). Rather, "a court is free to, and usually does, substitute its judgment *de novo* for that of the agency and determine if the agency interpretation of the statute is correct . . ." *Renda v. Iowa Civil Rights Com'n*, 784 N.W.2d 8, 11 (Iowa 2010) (emphasis in original). This Court possesses the authority, with no deference given to agencies, to interpret legal terms as they are not technical or complex to the extent that they need interpretation. *Irving*, 883 N.W.2d at 185.

This Court held that the reviewing court must reverse the agency's erroneous interpretation of a provision of law when such interpretation is not clearly vested in the agency. *Burton v. Hilltop Care Ctr.*, 813 N.W.2d 250, 256 (Iowa 2012) (citing Iowa Code § 17A.19(10)(c)). On the other hand, when the interpretation of the provision of law is clearly vested in the agency, the court will correct such interpretation if it is "irrational, illogical, or wholly unjustifiable." *Burton*, 813 N.W.2d at 256 (citing Iowa Code § 17A.19(10)(f)(l)).

The Supreme Court of Iowa applies canons of statutory construction to examine whether an interpretation of a statute is irrational, illogical, or wholly unjustifiable. *Doe v. Iowa Dept. of Human Service*, 786 N.W.2d 853,

858 (Iowa 2010). This Court resorts to canons of statutory construction mainly to determine the intent of the legislature. *Doe*, 786 N.W.2d at 858 (citing *State v. McCoy*, 618 N.W.2d 324, 325 (Iowa 2000)).

Further, the Supreme Court of Iowa will not affirm the agency's finding of fact unless it is "supported by substantial evidence in the record as a whole." *Grant v. Iowa Dep't of Human Servs*., 722 N.W.2d 169, 173 (Iowa 2006) (citing *Meyer v. IBP, Inc.,* 710 N.W.2d 213 (Iowa 2006); Iowa Code § 17A.19(10)(f)). The Supreme Court of Iowa has held that "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 525 (Iowa 2012) (citing *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

B. Ms. Sladek Could Not Have Voluntarily Quit Employment Because There Was No Employment to Quit

There was no employment relationship between Kelly and Ms. Sladek at the time Ms. Sladek supposedly quit because Kelly had already terminated Ms. Sladek's assignment. While employment relationships involve obligations on the employer and employee, all obligations had dissolved after Ms. Sladek's assignment at ACT was terminated and Kelly offered no

new placement. Thus, Ms. Sladek could not have quit her employment, and the EAB erred as a matter of law in so concluding.

Employment is defined as "service . . . performed for wages or under any contract of hire." Iowa Code § 96.19(18). An employment relationship exists so long as the employee provides services for her employer who, in exchange, pays her wages. This exchange of labor for wages is the essence of employment relationships. However, once the employer ceases paying wages to the employee, the employee is under no obligation to provide services and, thus, the employment relationship ends. Here, the employment relationship coexisted with Ms. Sladek's assignment at ACT because Ms. Sladek provided services to ACT and Kelly paid her wages. However, the moment when Kelly and ACT chose to terminate Ms. Sladek, Kelly told her not to report to ACT for work anymore, and Kelly offered no alternate placement, the employment relationship ended because the obligations of both the employer and the employee ceased to exist.

Under the Iowa Administrative Procedure Act, the reviewing court "shall reverse, modify, or grant other appropriate relief from agency action . . . if it determines that substantial rights of the person seeking judicial relief have been prejudiced" by the action of the agency if it is based on "an erroneous interpretation of a provision of law whose interpretation has not

clearly been vested by a provision of law in the discretion of the agency." *See* Iowa Code § 17A.19(10). In reviewing the agency's decision interpreting a provision of law, the court does not defer to the agency's view on matters that are not clearly vested within the agency's authority. Iowa Code § 17A.19(11). In *Irving*, where the EAB concluded that an employee had voluntarily quit, the court disagreed with the EAB's conclusion and declined to defer to the EAB's interpretation of the statute. *Irving*, 883 N.W.2d at 185. In *Irving*, the court reconfirmed its determination that it "should not afford deference to an agency's legal interpretations unless that interpretive authority has clearly been vested in the agency." *Id*. (affirming its conclusion in *Renda v. Iowa Civil Rights Com'n*, 784 N.W.2d 8, 11 (Iowa 2010) that deference should not be given to agencies' legal interpretations if such authority is not vested by a provision of law in the agency).

Temporary employment agencies' primary function is to connect individuals who are able and available for work to employers who need labor. Ms. Sladek signed her agreement with Kelly so that Kelly would aid her in finding a job. App. p. 15. Kelly, as a temporary employment firm, agreed to attempt to find job assignments for Ms. Sladek. App. p. 15. The nature of the relationship between temporary employment agencies ("temp agencies") and their employees is not a typical employment relationship. A

temp agency does not owe its individuals any benefits, neither do the individuals owe duties to the temp agency, until an individual accepts an assignment that the temp agency offered. Absent such an assignment, all that a temp agency owes to workers is to attempt to place them on job assignments. Even when a temp agency offers its worker a job assignment, the worker is under no obligation to accept it. An employment relationship arises only after the worker accepts an assignment.

The existence of the employment relationship continues so long as the employee is working on the assignment and the temp agency is paying the wages. When an assignment ends and no new assignment is forthcoming, the employment ends because, then, there would be no services exchanged for wages. Further, when a temp agency offers multiple assignments over time, the employment relationship does not exist during periods between assignments because the temp agency does not cover these waiting periods with payments. Moreover, a temp agency does not guarantee any type of assignment or amount of wages until an assignment is available. To put it simply, an individual could appropriately classify herself as an employee *only* while she has an ongoing assignment, but she cannot be appropriately classified as such when she is not working on an assignment and no new assignment is pending. Thus, after Ms. Sladek was dismissed from ACT,

and Kelly did not offer an alternate placement, the employment relationship between Kelly and Ms. Sladek ended. In fact, their relationship returned to the baseline, agent-client ties, pursuant to the agreement by Kelly to attempt to find assignments for Ms. Sladek, and not an employer-employee relationship where mutual obligations exist. In short, it was a legal error to conclude that Ms. Sladek quit with Kelly after the employment relationship ceased to exist.

Because the issue of employment by temp agencies has not arisen in Iowa unemployment cases, it is helpful to resort to decisions of neighboring courts in which the nature of the relationship between temp agencies and their employees was fully examined. The Minnesota Supreme Court concluded that temporary workers' receipt of temporary assignment by temporary agencies does not constitute an ongoing employment relationship. *Id.* Rather, the court held that contracts between temporary agencies and temporary workers are controlled by the traditional rules of offer and acceptance. *Smith v. Employer's Overload Co.*, 314 N.W.2d 220, 223 (Minn. 1981).

Moreover, in *Mbong v. New Horizons Nursing*, 608 N.W.2d 890 (Minn. Ct. App. 2000), the Minnesota Court of Appeals held that, as between a temp agency and its worker, an employment relationship exists

only when the worker has accepted an assignment offered by the agency. *Mbong*, 608 N.W.2d at 895. The Court observed that "[o]nce each assignment is completed, the employment relationship ends because there is neither a guarantee of future assignments nor any employer obligation to provide them." *Id*. The Court declined to characterize the nature of temp agency relationships with their temporary workers as ongoing employment because that would "trap[] [workers] of temporary agencies" in an unfair relationship with the agencies in which only workers are obligated to perform. *Id*. at 894. The underlying Minnesota statue was amended after *Mbong* to add a five-day extension after the completion of an assignment during which the worker must affirmatively request reassignment to avoid disqualification from unemployment benefits. *See* Minn. Stat. § 268.095, subd. 2 (1998) (Amended by Minn. Stat. § 268.095, subd. 2(e) (2000)). However, this statutory modification does not affect the analysis that the employment relationship exists only when there is an ongoing assignment.

Similarly, in *Cintemp, Inc. v. Unemployment Insurance Review Board*, 717 N.E.2d 988 (Ind. Ct. App. 1999), the Court of Appeals of Indiana held that there was no continuing employment relationship between temp agencies and their workers; rather, such employment is temporary, and it ends when the assigned work is completed. *Cintemp, Inc.*,717 N.E.2d at

992 (upholding the Administrative Law Judge findings that, with temporary employment agencies, when the temporary assignment ends, the employment between the temp agency and its workers ends in all respects except as to consideration for future assignments). In *Cintemp*, temporary employees were offered permanent positions with the client firm and told that they would probably not be able to continue as temporaries if they declined. The issue was whether the workers voluntarily quit their employment with the temporary agency for good cause when they accepted permanent employment offered by the client firm. *Id*. The court did not find an ongoing employment relationship between the temp agency and its workers; rather, the court held that the employment with the temp agency terminated when the assignment was completed. *Id.* The court held that "[o]nce an assignment ends the employee does not receive any pay or benefits from [the temporary agency], but does go back on the list of people eligible for placement." *Id.*

In this case, Kelly called Ms. Sladek on June 28, 2017 and told her that her assignment at ACT was terminated. The moment Ms. Sladek was informed of her termination without receiving any offer for another assignment, her relationship with Kelly returned to the baseline; the only association between Kelly and Ms. Sladek was based on the Agreement. The

Agreement, in and of itself, does not include any terms presuming an employment relationship. To say otherwise is to add to the terms of the Agreement. While employment is an exchange of services for wages, neither Ms. Sladek was obligated to render services nor was Kelly obligated to pay wages. Therefore, the agency erred in concluding that Ms. Sladek voluntarily quit from Kelly while there was no employment relationship in the first place.

C. Ms. Sladek Did Not Voluntarily Quit Because She Did Not Possess the Requisite Intent to Quit

Ms. Sladek did not quit employment with Kelly because Ms. Sladek did not state an intent to quit nor did she act in any way that could be fairly characterized as a quit. The EAB erred in determining that Ms. Sladek voluntarily quit because such determination of facts is not supported by substantial evidence. The court "shall reverse, modify, or grant other appropriate relief from agency action" if the agency's action is "[b]ased upon a determination of fact that is not supported by substantial evidence in the record before the court when that record is viewed as a whole." Iowa Code § 17A.19(10)(f).

The EAB based its decision to disqualify Ms. Sladek from receiving unemployment benefits on the single contention that she voluntarily quit. However, the facts in the records do not support such conclusion. Pursuant

to Iowa Administrative Code, a quit is "a termination of employment *initiated by the employee* . . ." Iowa Admin. Code r. 871-24.1(113)(b) (emphasis added). A voluntary quit is defined as "*discontinuing* the employment because the employee *no longer desires* to remain in the relationship of an employee with the employer from whom the employee has separated." Iowa Admin. Code r. 871-24.25 (emphasis added). Further, the employer has the burden of proving that the employee has voluntarily quit. *See* Iowa Admin. Code r. 871-24.25. The EAB erred in finding a voluntary quit because the employer failed to meet its burden of proving that Ms. Sladek voluntarily quit her employment with Kelly.

Ms. Sladek repeatedly expressed to Ms. Payne her concerns about losing her job and her need to remain employed. App. p. 42. While at ACT, Ms. Sladek knew that her employment was in jeopardy. App. p. 42. Despite her efforts to improve, she continued to perform below ACT's expectations. App. p. 52. Ms. Payne had responded to Ms. Sladek's concerns with promises to place her on a new assignment should her ACT assignment end. App. p. 43. Moreover, when Ms. Sladek was informed of her "handle time" issue, she worked hard to cure the issue and was able to reduce her handle times because she was trying to keep her job. App. p. 52. Had it been someone intending to quit, she would have just disregarded her work issues

so that her employer dismissed her instead of her quitting the job, which might negatively affect her unemployment benefits. Further, when Ms. Payne informed Ms. Sladek about terminating her position with ACT, Ms. Sladek pled and begged to keep her position. App. p. 45. Again, had it been someone with the intention to quit, she would have been indifferent as to losing the job.

The EAB inappropriately concluded that ending the phone call with Kelly and not contacting them again was sufficient evidence of Ms. Sladek's intention to quit. First, the phone call was all about Ms. Sladek's assignment at ACT, and neither Kelly's relationship with Ms. Sladek nor future assignments were ever discussed. Had Ms. Sladek intended to terminate her relationship with Kelly, she would have simply told them not to contact her anymore. Second, before ending the call, Ms. Sladek clearly demonstrated her strong disapproval of losing her job. Yet, the EAB is construing Ms. Sladek's objections to the dismissal as having demonstrated Ms. Sladek's desire of detachment from her job.

The facts in this case stand in stark contrast to cases where a worker's intent to terminate a relationship is evident. One example is *Julius v. Temp Force, LP*, 2004 WL 193193 (Minn. Ct. App.). There, the client employer directed the temp agency, Temp Force, to cancel Julius' assignment. *Id* at

*1. The temp agency's representative, Ms. Washa, told Julius about the end of the assignment, but reassured her that they could continue to work with her on other assignments. The court describes Julius' response: "Julius became upset. She waved her finger in Washa's face and called Washa offensive names. Julius then told Washa that she never wanted to work for Temp Force again." The court held that the employee's conduct constituted a voluntary quit. *Id.* at 1-2. In the present case, Ms. Sladek did not make any statement or take any action which might have indicated that she did not want Kelly to place her in additional assignments.

Moreover, Ms. Payne herself did not perceive her final encounter with Ms. Sladek as a quit because she explained to Ms. Sladek on the July phone call that there were no assignments available at that time. App. p. 45. Additionally, Ms. Sladek's past conduct with Kelly demonstrates that she had been dependent on Kelly to place her on job assignments. This pattern demonstrates Ms. Sladek's availability for future assignments should Kelly have any to offer. While a voluntary quit is when an employee "discontinues" the employment because she "does not desire" to keep the job, Ms. Sladek demonstrated the exact opposite; in fact, she not only communicated her desire to keep the job, but she also begged to keep her employment. *See* Iowa Admin. Code r. 871-24.25.

The ALJ did not support her decision in finding a voluntary quit with substantial evidence from the record "when viewed as a whole", as required by Iowa Code § 17A.19(10)(f). The Supreme Court of Iowa will not affirm the agency's finding of fact unless it is "supported by substantial evidence in the record as a whole." *Grant*, 722 N.W.2d at 173 (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006); Iowa Code § 17A.19(10)(f)). The Supreme Court of Iowa has held that "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal*, 814 N.W.2d at 525 (citing *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)). This Court should consider all relevant facts that contradict the EAB's conclusion in addition to the facts supporting it. Iowa Code § 17A.19(10)(f)(3); *Neal*, 814 N.W.2d at 525 (noting that viewing the record as a whole "includes consideration of evidence supporting the challenged finding *as well as evidence detracting from it*") (emphasis added); *Dawson v. Iowa Bd. of Med. Exam'rs*, 654 N.W.2d 514, 518 (Iowa 2002)).

The purpose of the 1998 amendments to the Administrative Procedure Act was to provide clarity and consistency in Iowa courts' review of agency action and to ensure Iowa courts are giving the required level of scrutiny

contemplated by the substantial evidence standard. Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 64 (1998). This is particularly due to the history of courts lowering the threshold of intensity required in scrutinizing an agency's decision, contrary to legislative intention. *Id*. at 59 (pointing out that courts "have not always provided an intensity of judicial review that is consistent with the intentions embodied in the language of the current act"). *Id*. at 59. This Court should review all parts of the records and not only the EAB's conclusion.

The ALJ's only finding of fact that supported her decision of a voluntary quit was Ms. Sladek's ending the call and not contacting Kelly for a few weeks. This single fact is not adequate for a reasonable person to conclude that Ms. Sladek quit; the record as a whole, which clearly demonstrates Ms. Sladek's intention to continue her employment, overwhelmingly contradicts such conclusion. Therefore, the ALJ's decision was not supported by substantial evidence when viewing the record as a whole. Reaching a conclusion based only on one fact, and disregarding those facts distracting from such conclusion, undermines the purpose of ensuring that agencies findings are supported and do not prejudice the rights of the person seeking benefits. *See* Iowa Code § 17A.19(10).

The ALJ, in finding a voluntary quit, cited to a distinguishable case, *Local Lodge No. 1426 v. Wilson Trailer Co,* 289 N.W.2d 608 (Iowa 1980). In *Local Lodge* the court stated that "quitting requires an intention to terminate the employment relationship accompanied by an overt act of carrying out the intent." *Id*. at 612. However, the court in *Local Lodge* found a voluntary quit because the employee demonstrated his intent with an overt act by giving the employer a written notice of his intent to quit with a specific date of termination. *Id*. at 609. A written notice of intention to quit the employment on a specific date is doubtlessly an overt expression of intention to quit. In contrast, in Ms. Sladek's case, ending a phone call that bears no relationship to the employment contract with the employer does not demonstrate an intention to quit. None of the records or the testimony of the parties support the conclusion that Ms. Sladek had the intent to quit. To the contrary, Ms. Payne knew that Ms. Sladek did not intend to quit when she had ended the phone call because, when Ms. Sladek called her back, Ms. Payne treated her as a worker with ongoing relationship with Kelly, not as a person who had quit.

Courts in other jurisdictions have addressed similar cases. In *Brown v. Port of Sunnyside Club, Inc.*, 304 N.W.2d 877 (Minn.1981), the court did not find a voluntary quit when the employee walked away from his

employer in the middle of a heated argument. *Brown*, 304 N.W.2d at 878-79. The court reasoned that this act of walking away did not objectively demonstrate an intention to quit. *Id*. In *Brown*, the employer testified that he was not sure what the employee meant by walking away. *Id*. at 879.

Similarly, Ms. Sladek was frustrated because her assignment was terminated and ended the phone call removing herself from a tense discussion. Ms. Payne did not view this act as a quit because she waited for Ms. Sladek to call her back. App. p. 45. Moreover, when Ms. Sladek called her back, Ms. Payne acknowledged an ongoing relationship with Ms. Sladek by discussing future assignments for her. App. p. 45.

In conclusion, the ALJ's findings that Ms. Sladek intended to quit and made an overt act to communicate that intent are both erroneous. Ms. Sladek had never communicated an intent to quit her relationship with Kelly, nor did she take any action inconsistent with her unequivocal desire to remain in her employment. In fact, by looking at the record as a whole, the evidence compels the conclusion that Ms. Sladek had been willing and striving to keep her employment relationship with Kelly.

D. Ms. Sladek Cannot be Deemed to Have Quit Under Iowa Code § 96.5(1)(j) Because Kelly Had Notice of Her Separation From ACT Within Three Days

The EAB decision inappropriately imposed a requirement that Ms. Sladek not only notify her employer of the termination of her placement but also expressly ask for new assignments within three days. The EAB misinterpreted Iowa Code § 96.5(1)(j) by reading into the statute a requirement that is not there. Ms. Sladek cannot be deemed to have quit because Kelly had notice of the end of the ACT assignment.

Iowa Code § 96.5(1)(j)(1) provides that an individual who fails to notify a temp agency of the completion of an assignment within three days is deemed to have quit. In particular, Iowa Code § 96.5(1)(j)(1) provides:

> 96.5 Causes for disqualification. An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
>
> * * * * *
>
> j. (1) The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

The agency rule intended to implement this provision is found at Iowa Admin. Code r.871-24.26(15)(a)(2016).

Paragraph (j) of 96.5(1) was passed into law in 1997. *See* Iowa Code § 96.5(1)(j). Until the passage of this provision, the relevant law relating to temporary or "spot" work provided that "[a]n election *not to report* for further possible assignment to work shall not be construed as a voluntary leaving of employment." Iowa Admin. Code r. 370-4.26(19) (1983) (emphasis added). Under that regulation, temporary workers were qualified for unemployment compensation so long as they completed their assignments, and they were not required to report for new assignments. The legislature altered the regulation from allowing temporary workers *not to report* for new assignments, to extending the employment status until employees *notify* their respective temp agencies within three days after the end of every assignment, so that the agency can place them in new assignments. This intention of the legislature is explicit in the explanation section of the bill introducing § 96.5(1)(j), in which the legislature stated that "[t]his bill provides that an employee of a temporary employment firm who does not *contact* the firm upon completion of an employment assignment under a contract of hire is deemed to have voluntarily quit employment for purposes of denying that person unemployment benefits."

House File 236, 77, 1st Sess., Comm. on Labor and Indus. Relations at 627 (Iowa 1997)(emphasis added). The addition of this provision in the Iowa Statute paralleled amendments of unemployment laws in other states regarding temporary workers' eligibility for unemployment compensation. *See* Deborah Maranville, *Changing Economy, Changing Lives: Unemployment Insurance and the Contingent Workforce*, 4 B. U. Pub. Int. L. J. 291, 310 (1995).

Reading the complete language of Iowa Code § 96.5(1)(j)(1) is essential in understanding its meaning. Iowa Code § 96.5(1) imposes a disqualification from benefits if an individual voluntarily quits employment without a good cause attributable to the employer. Subparagraphs (a)-(j) provide exceptions under which individuals are not disqualified for quitting. The exceptions come into play only if the separation can fairly be classified as a "quit". The first sentence of subparagraph (j)(1) prescribes that employees are exempted from disqualification for voluntary quit so long as the employee notifies the temp agency of the end of her last assignment and seeks reassignments. The second sentence confirms the requirement of *notificatio*n and stipulates an assumption of voluntary quit *only* if the employee does not notify the temp agency of completion of an assignment.

If the legislature intended to place a requirement on workers to expressly request new assignments to avoid the separation being deemed a quit it would have done so. In contrast, the second sentence of subparagraph (j)(1) provides plainly and unambiguously that "[f]ailure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit . . ." Iowa Code § 96.5(1)(j)(1).

Comparison to the Minnesota statute is instructive. It states in relevant part that "[a]n applicant has quit employment with a staffing service if, within five calendar days after completion of a suitable job assignment from a staffing service, the applicant: (1) fails without good cause to affirmatively request an additional suitable job assignment." Minn. Stat. § 268.095, subd. 2(e)(1). Iowa's statute is much narrower in the scope of when separation is deemed to be a quit. It applies only when the individual fails to give notice.

The language of a statute is to be given its plain meaning. *Jefferson County Farm Bureau v. Sherman*, 226 N.W. 182, 184 (Iowa 1929). When a statute is ambiguous, Iowa courts seek to determine the legislative intent by employing canons of construction. *Irving*, 883 N.W.2d at 191 (citing Iowa Code § 4.6 which lists factors that a court might consider in ascertaining the

legislative intent). Iowa Code §4.6 provides tools to aid in determining the legislative intent, including consideration of the preamble or statement of the policy. Iowa Code § 4.6(7) (2017); *Irving*, 883 N.W.2d at 191. Further, the Supreme Court of Iowa determined that it "should be circumspect regarding narrow claims of plain meaning and must strive to make sense of [a statute] as a whole." *Irving*, 883 N.W.2d at 191 (quoting from *Rolfe State Bank v. Gunderson*, 794 N.W.2d 561, 564 (Iowa 2011)). Accordingly, courts "assess the statute in its entirety, not just isolated words or phrases." *Id*. at 192 (quoting from *In re Estate of Bockwoldt*, 814 N.W.2d 215, 223 (Iowa 2012)). Besides, courts should avoid statutory interpretation that leads to absurd results. *Brakke v. Iowa Dep't of Natural Res.*, 897 N.W.2d 522, 534 (Iowa 2017).

Giving the statute its plain meaning reveals that there is no requirement that the temporary worker formally and affirmatively utter a "seeking" statement. Rather, the temporary worker is required to notify the temp agency *so that* the agency knows of the worker's availability for new work assignments. The seeking component is implied in the notification requirement. Why else would a temp employee notify the temp agency, whose role is to search for jobs, that she completed her assignment?

Moreover, Iowa Code § 96.5(1)(j)(2) requires the temp agency to advise the worker in writing of *the notification requirement*. Why is the agency not required to advise the worker of a seeking requirement? The answer is obvious; because there is no separate seeking requirement as the notification is presumed to be for the purpose of seeking new assignments. Additionally, the legislature, when it introduced the statute, included an explanation section stating that "[t]his bill provides that an employee of a temporary employment firm who does not contact the firm upon completion of an employment assignment under a contract of hire is deemed to have voluntarily quit employment for purposes of denying that person unemployment benefits." House File 236, 77, 1st Sess., Comm. on Labor and Indus. Relations at 627 (Iowa 1997). Again, the legislature did not intend to impose an explicit seeking statement because, given the nature of the relationship between a temporary employment agency and its employee, the only reason that the employee notifies the temp agency is to help the employee find a new job assignment. The contractual relationship between Kelly and Ms. Sladek requires Kelly to attempt to find reassignments for her; thus, it is unreasonably redundant to require Ms. Sladek to utter a seeking statement in its contact with Kelly after every assignment. In fact, past conduct between Ms. Sladek and Kelly's representatives demonstrate

the latter's acknowledgement that a seeking statement is not necessary; they did not wait for Ms. Sladek to utter such statement at any time during their relationship. *See* App. pp. 40-42.

Furthermore, the statute requires notification by the worker after *completion* of an assignment. The requirement that a worker notify the temp agency after completing an assignment is understandable considering the underlying policy, which provides incentives to the worker to remain working while at the same time protecting the temp agency from being unduly charged for unemployment benefits when the worker chooses not to contact the agency for more work. First, the temp agency does not ordinarily know when a worker completes an assignment as temp agencies do not supervise their workers while they are working for their client firms. Second, workers' desire and availability for work may change between assignments; thus, it may be appropriate to require them to contact the temp agency so the agency knows that they are available for and able to work in future assignments. However, assignments can also be *terminated by employers*, as opposed to being *completed by the employee*. If that is the case, the assumption remains that the worker is still willing and available for work because, but for the termination, she would still be working. Ms. Sladek actually falls in this second category; she was terminated by the employer,

and therefore, the assumption of her interest in and availability for work should remain unchanged as if she had been still working unless and until she clearly states otherwise. In fact, she expressed to Kelly on multiple occasions, before and after she was terminated, that she desired and needed to remain working. Therefore, there is no basis to conclude that Ms. Sladek's desire, need, and availability for work had changed after her last assignment had been terminated.

Typically, if a worker who completed an assignment notifies the temp agency of the completion of an assignment, the temp agency would take such contact as that the worker is looking for a new assignment. There is no other reason for the worker to contact the agency at the end of an assignment because the temp agency's only function is to connect individuals with employers. The underlying agreement between the temp agency and the individual, stipulating that the temp agency's role is to connect the individual with an employer, justifies the purpose of the contact. Taking this fact into perspective, there is no reason for the contact requirement except to notify the temp agency of its worker's availability for new assignments. Therefore, the seeking component is not a separate requirement, but it is a state of mind that is implied in the notification requirement. Therefore, the

statute does not require that the worker express an affirmative "seeking statement" to the employer.

The ALJ mistakenly considered "seeking" as a separate requirement when she stated that "the purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for *and seeking work* at the end of the temporary assignment." App. p. 62. Consequently, the ALJ found that Ms. Sladek conveyed her intention to quit by not promptly initiating contact with Kelly after the June phone call. The ALJ relied only on the first sentence of Iowa Code § 96.5(1)(j)(1), which resulted in misinterpretation of the meaning of the statute. A thorough reading of the statue reveals that when a worker completes an assignment, the worker must put the temp agency on notice of such completion, so that the agency knows of the worker's availability for new work assignments. *See* Iowa Code § 96.5(1)(j).

The ALJ's conclusion in this case, imposing a seeking requirement, is inconsistent with the Iowa Workforce Development's conclusions in other decisions issued by the Agency. For instance in *Ray v. Express Services Inc*, the Agency held that the employee needs to do no more than notify the temp agency of the end of an assignment. *Ray v. Express Services Inc.*, Appeal No. 04A-UI-10441-DWT. (2004), at 2.

(http://uidecisions.iowaworkforcedevelopment.gov/decision/webapi/decision?f=5b7d5cef-98ca-42ce-8df0-1b156c59bdac)

In fact, Ms. Sladek possessed and expressed her desire for job assignments by signing the Agreement, and ever since, she continued to express directly to Kelly her continuous desire and need for job assignments. Yet, the ALJ held that Ms. Sladek abandoned her employment. The ALJ based her decision merely on a single fact that Ms. Sladek did not promptly contact Kelly back after she ended the phone call. The ALJ mistakenly imposed an obligation on Ms. Sladek to initiate a contact with Kelly and express a seeking statement, and as such, the ALJ mistakenly decided that not doing so was an overt act demonstrating the intent to quit.

II. Even if Ms. Sladek Could Have Been Deemed to Have Voluntarily Quit, Iowa Code § 96.5(1)(j) Exempts Her From Disqualification for Unemployment Benefits

A. Standard of Review and Issue Preservation

This issue has been preserved for appellate review through the Petition for Judicial Review and subsequent filings with the district court. This issue has been argued throughout the proceedings below. Ms. Sladek asserted at the ALJ hearing and before the EAB that she satisfied the exemption from disqualification. App. p. 53 (contending that she should qualify for the unemployment benefits because Kelly was already on notice

of the end of her assignment); App. p. 25, 27, 53, and Brief and Arg. in Support of Claimant's Appeal p. 4 (contending that Kelly had notice of her need for another assignment). Further, Ms. Sladek asserted before the district court that she qualified for the exemption from disqualification.

Iowa Code § 17A.19(10) governs the judicial review of agencies' decisions. It prescribes that when an agency's action prejudices the substantial rights of an individual, and the agency's action meets one of the criteria enumerated in subsections (a-n), the court "shall reverse, modify or grant other appropriate relief from agency action." *Id*. Further, Iowa Code § 17A.19(11) stipulates the deference given to the determinations made by agencies. *Id*. In particular, it specifies that courts "[s]hould not give any deference to the view of the agency with respect to particular matters that have not been vested by a provision of law in the discretion of the agency." Iowa Code § 17A.19(11)(b).

The Supreme Court of Iowa has held that "the meaning of any statute is always a matter of law to be determined by the court." *Birchansky Real Estate, L.C.*, 737 N.W.2d at 138 (citing *City of Marion v. Iowa Department of Revenue & Finance*, 643 N.W.2d 205, 206 (Iowa 2002)). This Court has held that courts are not bound by administrative agencies' interpretation of law if such interpretation is not prescribed by a provision of law. *Irving*, 883

N.W.2d at 185. Rather, "a court is free to, and usually does, substitute its judgment *de novo* for that of the agency and determine if the agency interpretation of the statute is correct . . ." *Renda*, 784 N.W.2d at 11. This Court possesses the authority, with no deference given to agencies, to interpret legal terms as they are not technical or complex to the extent that they need interpretation. *Irving*, 883 N.W.2d at 185.

The Supreme Court of Iowa has determined that,"[e]vidence is substantial to support an agency's decision when a reasonable person would find it adequate to reach a conclusion." *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230, 232 (Iowa Ct. App. 1990) (citing *Eaton v. Iowa Dept. of Job Service*, 376 N.W.2d 915, 917(Iowa 1985)). Further, this Supreme Court will not affirm the agency's finding of fact unless it is "supported by substantial evidence in the record as a whole." *Grant*, 722 N.W.2d at 173 (citing *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 218 (Iowa 2006); Iowa Code § 17A.19(10)(f)). The Supreme Court of Iowa has held that "[i]n reviewing an agency's finding of fact for substantial evidence, courts must engage in a 'fairly intensive review of the record to ensure that the fact finding is itself reasonable.'" *Neal*, 814 N.W.2d at 525 (citing *Wal-Mart Stores, Inc. v. Caselman*, 657 N.W.2d 493, 499 (Iowa 2003)).

B. Ms. Sladek Qualifies for Unemployment Benefits Pursuant to the Exemption Prescribed by Iowa Code § 96.5(1)(j)

Ms. Sladek did not voluntarily terminate her relationship with Kelly; however, even if it could have been found that she voluntary quit, she qualifies for unemployment benefits because she meets the exception from disqualification provided in Iowa Code § 96.5(1)(j). Kelly was on notice that Ms. Sladek's assignment was terminated. In fact, it was Kelly who informed her of that termination. Moreover, Ms. Sladek was seeking reassignment. Therefore, Ms. Sladek qualifies for unemployment benefits under the statutory voluntary-quit exemption, and the EAB erred as a matter of law in not exempting her from disqualification.

The statute does not impose a separate requirement on temporary workers to affirmatively request new assignments after the completion of one assignment. The purpose of the notification is to put the temp agency on notice that the worker completed an assignment and has become unemployed so that the agency can place the worker in another assignment to avoid unemployment benefits liability. *Flanegan v. Labor Ready Midwest, Inc.*, Appeal No. 04A-UI-12470-DT (2004) http://uidecisions.iowaworkforcedevelopment.gov/decision/webapi/decision?f=7734e9e7-eee7-48bd-81a6-876f78eb2800. Therefore, the agency properly ruled in *Flanegan* that "[w]here a temporary employment assignment has ended and the employer is aware of the end of that

assignment, the employer is *already on "notice"* that the assignment is ended and the claimant is available for a new assignment; *where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately "notifying" the employer*." *Flanegan*, Appeal No. 04A-UI-12470-DT, (2004) (emphasis added).

Because the objective of the notification is that the temp agency is aware that its worker is unemployed so that the agency can place her in another assignment, it is redundant for the worker to contact the temp agency again when the agency is already aware of her availability for reassignments. Moreover, it is unreasonable to place a burden on the worker to notify the temp agency of information she received from the agency. To notify is "to inform", and "a person has notice of a fact or condition if that person (1) has actual knowledge of it." Black's Law Dictionary (10th ed. 2014).

Ample evidence demonstrates that Ms. Kelly wanted new assignments after her assignment with ACT had been terminated. First, Ms. Sladek had repeatedly informed Ms. Payne of her need to remain employed. App. p. 48. Ms. Sladek expressed to Kelly her fears of losing her job assignment due to some performance issues she had been having. App. P. 42, 44. Ms. Sladek strived to cure the deficiency in her performance to preserve her

employment. App. p. 52. Ms. Payne promised Ms. Sladek that she would be placed in another assignment should her ACT assignment end. App. pp. 43, 47. Even when Ms. Payne informed Ms. Sladek of the termination of her ACT assignment, Ms. Sladek's reaction demonstrated her need for reassignments, as she was crying and pleading not to be terminated. App. p. 45. In fact, Ms. Payne knew from Ms. Sladek's history and conduct with Kelly that she relied on Kelly to find her job assignments. With all that evidence demonstrating Ms. Sladek's desire and need for reassignments, not one piece of evidence can be found in the record to show the contrary. The decision below unjustifiably disregarded all essential facts but the inconclusive fact of Ms. Sladek's ending the phone call and not promptly contacting Kelly.

It is undisputable that Kelly had notice of Ms. Sladek becoming unemployed because Kelly was actually the one who informed her that her temporary assignment was terminated. It is undisputable that Kelly actually knew that Ms. Sladek was available and in need of a new assignment. Moreover, Kelly knew that Ms. Sladek had been reliant on them to place her on job assignments because, every time she had been laid off in the past, she began working again for Kelly to place her in new assignments. It is also undisputable that Kelly did not have work assignments ready for Ms. Sladek

when her ACT assignment was terminated, as Ms. Payne testified. *See* App. p. 48. Despite these undisputable facts, the EAB agency found that Ms. Sladek did not want to work on new assignments. Indeed, the only rational inference of the facts in the case is that Kelly did not want to offer, or did not have, new assignments for Ms. Sladek when they terminated her assignment with ACT. Although hanging up the phone on a temp agency might not be appropriate, it does not release the temp agency from its contractual obligations to search for assignments for the its employee.

Because Kelly was aware of Ms. Sladek's becoming unemployed and her availability for new assignments, Ms. Sladek satisfied the requirements for the exemption to the quit disqualification under Iowa Code § 96.5(1). Ms. Sladek should not be deprived of unemployment benefits because, even if she would be found to have voluntarily quit, Kelly was aware of Ms. Sladek's unemployment, and her need and availability for reassignments. Indeed, Ms. Sladek, as an individual whose unemployment was not her fault, is exactly who the Employment Security Law is meant to protect. The EAB erred in not exempting Ms. Sladek from disqualification based on the statutory exception despite her meeting its requirements. Therefore, the court should reverse, EAB's denial of benefits. *See* Iowa Code § 17A.19(10).

CONCLUSION

The appellant Teresa Sladek was erroneously deprived of unemployment benefits. The loss of her employment was for no fault of her own, and the EAB erred in disqualifying her from receiving benefits. Therefore, Ms. Sladek respectfully requests that this Court reverse the EAB's decision and grant her unemployment benefits.

REQUEST FOR ORAL ARGUMENT

Ms. Sladek respectfully requests the opportunity to be heard at oral argument upon the submission of this appeal.

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 9,143 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared using Microsoft Office Word 2016 in a proportionally spaced typeface, Times New Roman 14.

/s/ John S. Allen — 9/11/2018
Signature — Date

CERTIFICATE OF COST

I hereby certify that the actual cost of producing the necessary copies of the preceding Proof Brief for Appellant was $0.

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