2015 WL 1850315 (Mo.App. W.D.) (Appellate Brief)
Missouri Court of Appeals, Western District.

Clyde HAM, Appellant,

v.

VITAS HOSPICE SERVICES, LLC, defendants, and Division of Employment Security, Respondents.

No. WD78388.
April 14, 2015.

On Appeal to the Missouri Court of Appeals Western District
Appeal No. 14-19453 R-A
From the decision of the Labor and Industrial Relations Commission dated February 10, 2015

Appellant's Brief

Clyde Ham, 11400 E 19th St S, Independence, MO 64052, Self-represented, Mr. Michael Eugene Cook Pritchett -General Counsel of Labor and Industrial Relations, P.O. Box 599, Jefferson City, MO 65102-0599, for respondent.

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21SY ***1 JURISDICTIONAL STATEMENT**

This case is an appeal from a determination of the Division of Employment Security (DES) in favor of Respondent and Defendant on a petition for unemployment benefits from Appellant. A Notice of Appeal was filed in a timely manner. The Rules of the DES provide for an appeal in this Court. Therefore, jurisdiction lies in this Court, Mo. Const. Art. V, Section 3.

Jurisdiction in the Missouri Court of Appeals is invoked at this time to answer two questions:

1.) Whether the Division of Employment Security (DES) has satisfactorily applied case law and appropriate statutes in considering all four (4) points of contention brought to the DES by the appellant, Clyde Ham, against the defendant, VITAS Hospice Services, LLC and whether due consideration was given to each in the determination of disqualification of benefits by the deputy of the DES.

2.) Whether VITAS can be held liable to the Appellant for:

a. Payment of back pay for ALL “on-call” hours worked.

b. Sufficient compensation for mental, emotional, and physical stress due to the workplace violence; the failure of VITAS to follow Federal and State law; and the request from VITAS for relief of unemployment claims by Appellant.

***2 STATEMENT OF FACTS**

On October 15, 2014, I, the appellant, Clyde Ham, resigned my dual positions as Bereavement Services Manager (BSM) and Chaplain for the defendant, VITAS Hospices Services (hereafter VITAS). (I.f. 009, 014), (t.r. 076, 081, 088). After having informed at least two managers- my direct supervisor, Patient Care Administrator (PCA), Gwendolyn Kirkland, and General Manager (GM), Julia Vandervelde, - of my intentions, I took leave of the company's Inpatient Unit (IPU) at Research Medical Center [Hospital] and the VITAS main office at 6601 Winchester Ave., Kansas City, MO 64133; I left immediately upon clearing my personal effects from the main office. It is significant that the fact that I did talk to two managers is affirmed by the Referee based on my sworn testimony (I.f. 019) but incorrectly reported by the DES deputy on this 1426C Claimant Statement Report. (t.r. 091).

I did inform both managers from VITAS of at least two reasons for the immediate resignation:

1.) the refusal of VITAS to pay a "Fee For Service (FFS)" of $45.00 to me for an aborted bereavement visit to the IPU on October 10, 2014 and a demand from VITAS that I falsify the Medicare record as "an attempted visit." (1.f. 010-011, 015-016), (t.r. 077-078, 082-083, 089-090); and,

***3** 2.) the religious/spiritual abuse of a patient's family within the IPU on the day previous - October 14, 2014, at which time of the patient's death, the clergy of the deceased patient and his family were forced out of the room by Jackie Johnson, Admission's Liaison for VITAS, and subsequently the spouse of the deceased was verbally and emotionally abused by Ms. Johnson as she inappropriately scolded the spouse mercilessly in order to stop her grieving which Ms. Johnson found to be distressing. (1.f. 010, 015), (t.r. 077, 082, 089).

During the conversation that ensued with General Manager, Ms.Vandervelde, on the afternoon of October 15, 2014 prior to my departure, she suggested I write a letter of resignation that would be needed to apply for unemployment benefits. Ms. Vandervelde cordially assisted me in packing my personal effects and even helped me load these into my car. Said letter of resignation was written and delivered via e-mail to Ms.Vandervelde, on October 16, 2014 in which I detailed the two reasons previously identified to her along with two additional points of contention of which she was well informed through previous conversations. (1.f. 009- 011, 014-016), (t.r. 076-078, 081-083,088-090).

As a matter of discussing this statement of facts, the resignation letter will be used as a basis. *(Id.).* It will be noted that four (4) reasons for my resignation were given in my letter. *(Id.).* Let it be stated at the outset of this statement that these ***4** four (4) reasons all coalesced into my making a decision that employment with VITAS was no longer possible and that the failure to pay the FFS was the *"straw that broke the camel's back"* as I stated to the deputy of the DES in my conversation with him following my initial claim. (t.r. 091).

Reason 1: Hostile Workplace Environment -

This reason significantly influenced my decision to resign because of an incident which occurred on October 14, 2014, just one day before my resignation (1.f. 009, 014), (t.r. 076, 081, 088). The incident centered around my being slandered by Mr. Michael Campbell, a chaplain with VITAS, in the presence of the entire VITAS Missouri home team on three occasions. The slanderous implication was that "it [is] I who has refused to communicate and work within the program for the betterment of patients, families, and staff." *(Id.)*

I will provide details of the significance of the timing of this event later in this brief but let it suffice for now to say that my resignation letter states that: "Following the documented incident with Mr. Campbell [on June 18, 2014], in which I was physically and verbally assaulted in my office, the workplace continues to be one of hostility and tension." *(Id.)*

Reason 2: Failure to Provide a Reasonable Level of Assistance for My Function as Bereavement Services Manager [BSM]

I stated in my letter of resignation the following: "Since I took on the responsibilities as Bereavement Services Manager I have repeatedly and properly ***5** asked for assistance from others in carrying out those tasks." (1.f. 009-010, 014-015), (t.r. 076-077, 081-082, 088-089). I further stated: "I have repeatedly begged....to you as GM [Ms.Vandervelde], and... the TMG [Team Manager (Theresa Betterton, at the time)], PCA [Patient Care Administrator(s), Brenda Andrascik and Gwendolyn Kirkland], and PIS [Patient Information Specialist, Debra Thornton]." (1.f. 009-010, 014-015), (t.r. 076-077, 081-082, 088-089).

I went on to say: "Senior Internal Consultant of Bereavement & Volunteer Services Manager, Rebecca Stroud, visited the Program in August [2014], noted my assessment of needs and my interpretation of the role of BSM in association with chaplains and social workers, and met with PCA's, Brenda Andrascik and Gwen Kirkland, to discuss her recommendations on meeting these generally accepted and implemented practices at other VITAS programs. Nothing has come of those recommendations

from that visit for three (3) months. I needed someone to intervene and force others to do their jobs to relieve the stress and pressure on me." (Id).

I brought up this issue of stress and pressure at the hearing before Referee, Mr. James D. Wood (hereafter, Referee), when I let it be known that the outgoing Bereavement Services Manager (BSM), Naomi Cataudella, communicated to me the following information regarding the expectation that others were to assist me in my role as BSM. She stated: "I forgot to tell you that the BSM is not expected to ***6** run groups[,] do all event and staff support alone. The chaplains and social workers are your team and help with that." (t.r. 027-028, 070).

Reason 3: Spiritual and Religious Abuse of Patient, [redacted], and His Family at the IPU.

Since the entire section of the resignation letter regarding this reason for my leaving is a verbatim of the abuse perpetrated on the deceased and his family, and since it is indicative of the true facts in the abuse perpetrated by Jackie Johnson and Gwendolyn Kirkland, both VITAS staff personnel, I cite it now in its entirety:

"During the afternoon of Tuesday, October 14, 2014, Mr. [redacted], passed away while in the IPU. I, along with a number of wonderful team members, attended to the needs of his CG, Mrs. [redacted], after his death at which time she expressed deep, strong grief through very demonstrative and loud verbalizations of that grieving. This is perfectly valid and needs to be honored when it happens. I sat on the floor at length with her, holding her, consoling her through presence and touch, reading appropriate scripture for her, praying with her, as did a number of our team members at various times, allowing her to express this grief while we held a compassionate attitude of being a "non-anxious presence" for her. Marvelous ministry. The family present held the same sense of this non-anxiety, typical of those persons of their faith, Jehovah Witness. Jackie Johnson [VITAS Admission's Liaison] came into the room, not knowing the patient, the CG, the faith, or the relationships, and proceeded to scold the CG using inappropriate ***7** words of "he's in a better place, you're going to be alright, etc. and jumping around saying someone needs to pray. At this point other family members had arrived, and these were **Elders** of the Church! the patient's church! the CG's church! These **Elders** of their church asked the staff to leave the room so they could minister to their deceased and the CG to which our staff answered by telling them to get out of the room! We told their ministers, their pastors, their **Elders**, to leave the room! We abused the very patients and families we claim to care for and about After I left the room, I was called into the office of the PCA, Gwendolyn Kirkland, [my immediate supervisor] only to be berated and accosted stating I had failed in my role as Chaplain because I had not prayed when Jackie Johnson said someone needed to do so. My jaw dropped to the ground as I listened to a violent and angry accusation of my failure - and not a reflection upon the team approach to care for that family at the time of such grieving. Her statement to me, very angrily and hatefully was "No! A,B,C (as she hits the desk with her finger), A.) someone calls for prayer!; B.) I have a Chaplain in the room!; and C.) YOU DIDN'T's And yet, we as a caring hospice organization, we violated that family and their **Elders** by telling those ministers to get out of the room when they wanted to pray with her." (emphasis added) (l.f. 010, 015) (t.r. 077, 082, 089).

8** ***Reason 4: Unfair and Abusive "On-call" Policies"

Since the entire section of my letter attached to my initial claim to the DES regarding this reason for my leaving is a detail of the facts, and, more importantly, it is the "straw that broke the camel's back" (emphasis added) (t.r. 091), as it was told to the deputy of the DES in the phone interview, and ***it appears to be the only point addressed by the DES and the LIRC in reaching a ruling of disqualification on my claim,*** I cite it now in its entirety (emphasis added):

"It came to my attention Wednesday, October 15, 2014, that an aborted visit I was called to make at the IPU, FOR A DEAD PATIENT's family on October 10, 2014 was incorrectly recorded as a FFS [Fee For Service], should be reclassified as an "attempted visit" and I would not be paid the $45.00 fee. The patient was dead! How can I have made a visit with him? This was a bereavement visit! Yet, I get a call from TMG [Kirsten Parker] telling me the PCA has made the decision without even knowing the facts [and I will not be paid the fee of $45.00]. If anything is unfair and ludicrous, it is the policy VITAS has for compensation of administrative individuals for on-calls. I got up when called, I got dressed, I drove almost the entire distance

to IPU, then get a call that the family decided they did not want a chaplain. I drove home, I got undressed, and yet, a legitimate $45.00 FFS for my efforts are not honored much less, not being given the same $2.00/hour "on-call" pay as everyone else. If I should have been given the hourly rate, then why didn't ***9** the Business Manager make sure that happened?" (1.f. 010-011, 015-016), (t.r. 077-078, 082-083, 088-089).

Additionally, the day after I resigned, VITAS GM, Ms.Vandervelde, placed a phone call to me to inform me that she had authorized VITAS Business Manager (BM), Nichole Cash-Haney, to pay me "back pay" in the amount of $600.00! (1.f. 008, 013), (t.r. 075, 080). $600.00 is a stunning amount of back pay and it would have covered the sixteen (16) month period of my entire employment history with VITAS which I pointed out in my closing statement. (t.r. 102).

Clearly I was not being paid fairly or equitably for many hours of on-call services for the company. I requested an explanation of the pay calculation for those hours in my appeal to the Tribunal but none was provided by VITAS nor did the Referee issue a subpoena for these or the proof from VITAS that the FFS had been paid. (Id.).

***10 POINTS RELIED UPON**

POINT I

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:

- 29 C.F.R. § 785;

- 29 U.S.C. § 206;

in that, hours worked are to be paid by law and at a fair and equitable rate.

Clark v. Labor & Indus. Relations Commission (L.I.R.C), 875 S.W.2d 624 (Mo. Ct. App. 1994)

Kinzeler v. Vitas Healthcare Corporation of Ohio, No. 1:2012cv00659 - Document 47 (S.D. Ohio 2014)

Lindow v. United States, 738 F.2d 1057

POINT II

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:

- **42 C.F.R. § 418; and,**

- **MO Rev Stat § 197.266**

***11 in that, the failure of VITAS to morally and ethically follow the Federal and State regulations governing the care of hospice patients and families is sufficient cause for a chaplain to leave the employ of said employer for moral and ethical reasons while remaining fully qualified for unemployment benefits.**

Clark v. Labor & Indus. Relations Commission (L.I.R.C.), 875 S.W.2d 624 (Mo. Ct. App. 1994)

POINT III

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statute:

- OSHA, 29 C.F.R. § 654

in that, the failure of VITAS to provide a workplace free of violence is sufficient reason for any employee to leave the employ of said employer while remaining fully qualified for unemployment benefits.

Tin Man v. Labor and Industrial Relations Commission, 866 S.W.2d 149 (1993)

Belle St. Bank v. Indus. Commission Div. of Emp. Sec., 547 S.W.2d 841 (1977)

***12 POINT IV**

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statute:

- 19 C.S.R. 30-35.010

in that, the failure of VITAS to provide a workplace adhering to the Missouri State Statutes for the accurate and timely documentation of hospice records while holding Appellant responsible for oversight of the compliance to these is sufficient reason for any employee to leave the employ of said employer while remaining fully qualified for unemployment benefits.

***13 POINT I ARGUMENT**

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:

- **29 C.F.R. § 785;**

- 29 U.S.C. § 206;

in that, hours worked are to be paid by law and at a fair and equitable rate.

The only issue which the DES found credible in the initial claim was the matter of the $45.00 FFS. [1] The entire determination by the deputy, which was supported by the Tribunal and then the LIRC, centered on this issue, therefore, it must be a significant element to be explored. [2]

It was pointed out in the Application for Review (hereafter, Application) that the deputy of the DES who initially issued a determination as to denial of unemployment benefits based it solely on this $45.00 FFS. [3] However, it was shown in the

Application that the deputy misread the statements in the claim and misrepresented his conversation with me over the phone in his 1426C Claimant ***14** Statement Report.[4] In that document he stated that I was informed the "patient had died" as I drove to the hospital. An aborted visit for a "dying" patient would have been an "attempted visit" but the same aborted visit for a dead patient would have been a "bereavement visit." The patient was DEAD. I repeat this error I brought to the attention of the DES in my Application in which I stated:

"The Referee has failed to understand that "dead" patients are no longer subject to the rule of an "attempted visit" and thus has incorrectly determined that I "did not perform a service." The service was performed and should be subject to compensation for the $45.00 FFS. His failure to understand the difference in "did" and "did not" and "living" and "dead" is supported by his own statement in his finding where he writes: "The credible evidence shows that the claimant quit his job because he was not paid the $45.00 that he expected to earn by providing services to a dying patient on October 10, 2014. There is a significant difference in "dying" and "dead." This is troubling as he decided the outcome of this case based on this failure to read the rudimentary paperwork submitted."[5] (emphasis added).

VITAS was asking for me to falsify the visit document from a "bereavement visit" to an "attempted visit" which is reserved for a "living" patient which provides VITAS with monetary gain as Medicare only pays for "living" patients.

***15** This error by the Referee caused him to then state in his own determination that I "abandon[ed] [my] job when informed [I] would not be paid for services [I] *did not perform.*"[6] (emphasis added).

The Referee erred in his conclusion that I did not perform the work; erred in concluding that I did not meet the criteria that "the burden to prove good cause rests on the claimant," as found in his citation of *Contractor's Supply Co. v. L.I.R.C.*, 614 S.W.2d 563, 564 (Mo. App. 1981);[7] and finally, erred in failing to consider any additional reasons for "good cause" due to his conclusion that "good cause shall include **only that cause.**..." (emphasis added).[8]

The following question then rises: Does an unemployment claim always rest on one single cause or may more than one be pertinent to a successful claim?

I maintain that I did perform an "on-call" service which is subject to compensation under Statute 29 C.F.R. § 785 and the pay rate must meet the law stated under Statute 29 U.S.C. § 206.

A. Review Applicable to 29 C.F.R. § 785

It is significant that VITAS did, in fact, admit to their failure to pay me fairly and equitably for the hours worked while "on-call" when, the day following my resignation, October 16, 2014, the GM, Ms. Vandervelde, did place a call to inform ***16** me she was authorizing the Business Manager (hereafter, BM), Nichole Cash-Haney, to pay me back-pay of $600.00.[9] Given the known unfair and inequitable "on-call" pay rate of $2.00/hour (to be discussed later in this brief), this would suggest VITAS was paying me for some 300 hours (equivalent to 7.5 weeks!) of accumulative "on-call" hours. That is a significant number of hours for which VITAS withheld pay. A question may be asked: Why did the DES and LIRC overlook this self-indictment of VITAS and their compensation practices?

But, more significantly, is the attempt by VITAS to withhold pay to an employee who they have evidence is working or has worked. Although it directly addresses overtime pay, *Lindow* is instructive.[10] In that case the Court relied on Fox in which it "held that 'an employer who knows or should have known that an employee is or was working...' ...is obligated to pay..." Thus, VITAS is obligated to pay me for the "on-call" hours as a matter of law. This would mean ALL "on-call" hours worked and VITAS must prove the total number of "on-call" hours worked by the Appellant for the sixteen (16) month period June, 2013 - October, 2014.

***17** The *Lindow* [11] Court further relied on Forrester, finding "An employer who is armed with this knowledge cannot stand idly by and allow an employee to perform ...work without proper compensation, even if the employee does not make a claim to the ...compensation." This point is very significant because I had repeatedly brought the matter of my not being qualified for "on-call" pay to the attention of the BM over the course of my sixteen (16) month employment asking why I did not qualify for the $2.00 per hour compensation to which the BM always replied, "That's [the $45.00 FFS] all you get, Clyde, that's all you get!"

The BM also indicts VITAS through her own testimony before the Tribunal as documented in the transcript in which she attempted to prove I was paid the FFS from which I quote: [12]

Q [Appeals Referee]: Cash do you have any questions you wish to ask
Mr. Ham.?

A [Cash, BM]: I do.

Q: Ask now please.

Q [Cash, BM]: You state that you were not paid a $45.00 fee for service.

A [Ham]: Yes.

Q: I'm looking at your paycheck, pay period ending 10/18/2014 issued ***18** on 10/24/2014 that shows you were paid $45.00 for a visit made that you entered into VRU at 22:15 on 10/10/2014.

Q [Referee]: What is your question Ms. Cash?

A: My question is why you are stating you were no paid for that?

A [Ham]: Well, if you would please tell me where I'd find that on the document you sent me this last Friday - the pay stub for 10/1 to 10/31. don't see where it shows up."

Q [Referee]: Were any of these - were any of these pay stubs provided to me for this hearing Ms. Cash?

A: It was not...

Q: Well you're referring to a pay check stub which I don't have before me. Do you understand that?

A: I do understand that.

Q: Did you have another question you wished to ask him, as I do not have that pay stub. It was not provided to me by the employer.

A: No.

(end quote)

Therefore, VITAS failed to provide documentation that the $45.00 FFS was paid thus violating the Federal Statute 29 C.F.R. § 785 which mandates pay "for ***19** hours worked" is a federally granted right for an employee. The Referee agreed this FFS was not paid as he wrote in his determination:

"The credible evidence shows that the claimant quit his job because he was not paid the $45.00 that he expected to earn by providing services to a dying patient on October 10, 2014." [13] (emphasis added).

Statute 29 C.F.R. § 785.11 addresses this issue as it stipulates: "Work... suffered or permitted is work time." [14] The Statute further states in Subpart C 785.17: "An employee who is required to remain on-call ...so close thereto that he cannot use the time effectively for his own purposes is working while "on-call." [15] Thus, pay for time worked while "on-call" is a matter of law.

In my closing statement before the Tribunal, I spoke to the reasonableness of my resigning based on failure to pay me the $45.00 FFS and stated that I found it "certainly understandable knowing that they [VITAS] made such a large back pay payment to me, which I believe indicts the company for failure to pay fairly and equitably." [16]

This raises a further question: Did the $600.00 back pay include ALL the hours worked while "on-call" for October 10, 2014? That would have amounted to 15 hours (5:00 p.m. to 8:00 a.m. October 11, 2014)? And it raises a second ***20** question: How many hours of "on-call" did I perform over the course of the sixteen (16) months of my employment?

In my attempts to gather evidence for this claim and, more particularly, for "on-call" calendars showing all my "on-call" hours over the entire course of sixteen (16) months of my employment, I made a personal request for documents from Kelly Moriarty, a Human Relations person for VITAS but was denied. That request went to the GM and BM for VITAS in the Missouri business office but all was denied with the exception of the payroll document. That request then went to the Referee of the DES as a document entitled, "Requested Subpoenas for Testimony or Documents" dated December 10, 2014 and attached to this brief in the Appendix. [17]

A phone call to me from the Referee prior to the first hearing on this claim to be held on December 17, 2014, indicated to me that he *would not* issue any subpoenas prior to the hearing but *would* issue a subpoena if he found need during the proceedings of the hearing. A question may be asked: Why was there no attempt to address any of these documents or testimonies during the hearing (or in the subsequent continuance) by the Referee? [18] These witnesses and documents ***21** would have added merit to my case but it appears that the Referee chose to ignore them.

It was as if nothing but the $45.00 FFS was considered in the determination of this claim.

Additionally, it is a proven fact that VITAS has essentially admitted to wrongdoing in failing to compensate employees properly when the company agreed to some rather large class action settlements in the recent past. I cite a 2004 case, *Costa v. VITAS Healthcare Corporation of California,* in which VITAS agreed to a settlement of $15,000,000.00 in a lawsuit involving "the failure to pay overtime" which was a violation of the California Civil Code known as the Unfair Competition Law [hereinafter "UCL"], Business and Professions Code § 17200." [19] A second case, *Bernedette Santos v. VITAS Healthcare Corporation of California,* was settled in 2006 for $10,300,000.00 in which VITAS was accused of failing to pay employees "for all hours worked." [20] These two settlements offer support for my contention that VITAS knowingly paid me unfairly and inequitably.

Let me summarize my point as to the applicability of Statute 29 C.F.R. § 785 by saying that it supports that I am justified in my claim to "on-call" hours worked; did not leave my job without good cause; and, also suggests it is reasonable to ***22** request that VITAS bring forward the documentation which will definitively answer the question as to how many "on-call" hours are due to me in back pay.

B. Review Applicable to 29 U.S.C. § 206

The Fair Labor Standards Act (FLSA), 29 U.S.C. § 206, mandates the minimum wage for any hours worked by an employee for an employer is $7.25. [21] As pertains to the applicability of this Statute, the settlement of Kinzeler, which also involved VITAS, may be cited. [22] In that case the Court held that the Plaintiff was due compensation for work hours she performed but which were falsified by VITAS when the company altered the employee's payroll records and the Court ruled that she was due a minimum pay rate of $7.25/hour for hours as mandated by FLSA. [23] The Court found two significant issues in this case, 1.) "A reasonable jury could conclude Plaintiff was not accurately paid for hours worked;" and, 2.) "Plaintiff has viable claims for pay violations under FLSA." [24]

It is widely known by all hourly employees of the branch of VITAS in Missouri for whom I worked, that VITAS for years has paid "on-call" personnel an unfair an inequitable $2.00 per hour pay rate for that type of work. Therefore, ***23** according to the ruling cited in Kinzeler, and FLSA, this policy is a violation of federal law. [25]

Additional Discussion:

That being said, let me point out additional matters of case law to support *the fact that I did not leave work with the employer voluntarily without good cause* by citing Clark in which the Court stated that "the claimant must act consistently with a genuine desire to work..." [26] When the Referee asked me during the first hearing if I would have resigned if the $45.00 FFS had been paid to me, I stated "No". [27] He asked if I intended to resign the morning of October 15, 2014 to which I answered, "No! [28] This demonstrates my work ethic and interest in serving as a Chaplain and BSM for VITAS and my willingness to always work with management to correct working conditions when necessary. The refusal of VITAS to pay the FFS was the "straw that broke the camel's back" which I stated to the deputy and which he reported in his statement. Had the other three issues not been present perhaps the story would have been different but, in any case, something was amiss at VITAS.

24** ***Summary:

I believe the foregoing has sufficiently shown that 1.) *I did not leave my employment without good cause;* and 2.) It has raised questions of the number of hours involved in "on-call" which should be paid at the $7.25/hour pay rate specified by FLSA. And finally, VITAS failed to prove I was paid the $45.00 FFS.

POINT II ARGUMENT

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:

- **42 C.F.R. § 418; and,**
- **MO Rev Stat § 197.266**

in that, the failure of VITAS to morally and ethically follow the Federal and State regulations governing the care of hospice patients and families is sufficient cause for a chaplain to leave the employ of said employer for moral and ethical reasons while remaining fully qualified for unemployment benefits.

My employment with VITAS was fraught with several difficulties, one being the failure of the company to adhere to the regulations cited above in regards to providing proper hospice services to patients and their families. This issue was ***25** made known in the letter I sent to the GM on October 16, 2014 detailing my reasons for my resignation and included in item 3 of that document. [29]

The events at IPU from October 14, 2014, the day before my resignation, are detailed in item 3 of the verbatim in the resignation letter and clearly indicate abuse of the patient, the caregiver/spouse, and the clergy of the family. This is in direct violation of MO Rev Stat § 197.266 in which it is stated: *"Abuse and **neglect**, penalty - Any hospice or employee of a hospice who knowingly abuses or **neglects** any client, ...shall be guilty of a class D felony."* [30] (emphasis added).

This was the last of several major abuses I witnessed, had brought to the attention of management, or knew had been brought to the attention of management by others. Claimant Exhibit 1 which I presented at the first hearing supported those allegations and the efforts I made over the course of seven (7) months to rectify/change the behavior. [31] It is instructive to quote one of those now.

"The most egregious bit of information is that a family supposedly told one of our team members that Michael's [chaplain who was in 90 day probationary period] use of his musical instrument at the time of their loved one's dying, *made them feel as though it scared the patient which caused them discomfort* ***26** Personally, even during training, I felt Michael used his [musical] instrument much too often and sometimes plays it within minutes of entering a patient's presence whom he has never met." [32] (emphasis added).

This can be seen as an example of the violation of the rights of patients and families under Federal Statute 42 C.F.R. § 418.52.c.6. That specific Statute states: "The patient has a right to the following: Be free from mistreatment, **neglect**, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, and misappropriation of patient property;..." [33] These abuses would include those of subjecting a patient and family to unwanted music therapy and it is pointed out that his use of the musical instrument was strictly against the policies of VITAS regarding music therapy which were also submitted as evidence to substantiate the negligence of VITAS in allowing the abuse. [34] In that document the following warning for providing music therapy is stated:

"While beneficial to many patients, music can sometimes increase anxiety and agitation in others. Therefore, not every patient and family will be interested in music therapy. *Music therapists are trained in assessment and will discontinue therapy if a patient displays a negative or harmful response."* [35] (emphasis added).

***27** Although not made part of the Record on Appeal because my request for subpoenas was not permitted by the Referee of the DES, a document entitled, "Requested Subpoenas for Testimony or Documents" dated December 10, 2014 is attached to this brief in the Appendix in which a request for the credentials of Mr. Campbell as a music therapist was denied by VITAS. [36]

That document requesting subpoenas is also very pertinent to the matter being discussed and it is a significant indictment of VITAS because it relates to the sexual abuse of a patient which VITAS did nothing to mitigate or stop. [37] I quote from that document for emphasis of my concern:

I. As it relates to Issue 3 in Resignation Letter to VITAS General Manager, JuliaVandervelde, dated October 16, 2014 and in Claimant Request for Appeal to the DES:

a. Patient records as listed below: (time/date portion only showing times of event, no patient disclosure requested)

Patient	Pt ID	Documents Requested:

[redacted]	[redacted]	all of Mr. Campbell's notes (dates and times of events only, no patient disclosure requested)

Reason: Notes will show Mr. Campbell continued to harass patient to schedule visits after Case Manager (CM) had reported to the PCA, Brenda Andrascik, that she (the patient) was afraid of him due to his failure to keep proper sexual boundaries and did not want to have him visit her again. This should have generated a "service comment" via the VITAS customer care system and notification of Mr. Campbell ***28** not to visit or call. This will be used to prove systemic disregard for the religious/spiritual rights of patients and the accepted abuse of patients by VITAS management."

Thus, this particular abuse had been reported to VITAS management and nothing was done to mitigate the abuse. I can personally testify to this as I had a conversation with the patient when she was moved to the IPU for care and in that conversation she shared quite emotionally the level of fear and angst the visit from Mr. Campbell had perpetrated upon her sexually. Proof of the conversation is documented in text messages I sent to the Case Manager (CM) which are included in the Appendix. [38] The hospice chart will document the continued abuse as Mr. Campbell was never told to leave the patient alone and that he was not to visit her. Those notes will confirm the patient had to find excuses to avoid his continuing calls to schedule visits with her. The Appendix also contains the summary of documents I had requested for subpoena but these were denied by the Referee.

The Federal regulations under 42 C.F.R. § 418 further establishes what must be done regarding the protections of hospice patients and their families. I cite Section 52.b4.i-iv of that Regulation:

"(4) The hospice must:

(i) Ensure that all alleged violations involving mistreatment, **neglect**, or verbal, mental, sexual, and physical abuse, including injuries of unknown source, ...by ***29** anyone furnishing services on behalf of the hospice, are reported immediately by hospice employees and contracted staff to the hospice administrator;

(ii) Immediately investigate all alleged violations involving anyone furnishing services on behalf of the hospice and immediately take action to prevent further potential violations while the alleged violation is being verified. Investigations and/or documentation of all alleged violations must be conducted in accordance with established procedures;

(iii) Take appropriate corrective action in accordance with state law if the alleged violation is verified by the hospice administration or an outside body having jurisdiction, such as the State survey agency or local law enforcement agency; and

(iv) Ensure that verified violations are reported to State and local bodies having jurisdiction (including to the State survey and certification agency) within 5 working days of becoming aware of the violation." [39]

These protections, *required by law, did not happen* in the above cited cases of patient abuse reported to management of VITAS. Patients were abused repeatedly.

As pertains to my unemployment claim, appropriate case law to support my claim that *I did not leave work with the employer voluntarily without good cause* may be cited from court rulings. The first comes from the Clark court in which it ***30** was ruled "Good cause" has been said to be "limited to instances where the unemployment is caused by external pressures so compelling that a reasonably prudent person would be justified in giving up employment." [40]

In the matter of patient protection I have no authority or control over the lack of management to address issues and resolve those matters of serious patient abuse. I can merely report as I had been doing for over five (5) months in the case of Mr. Campbell's alleged abuse of the two patients mentioned in this brief. I maintain that these "external pressures [are] so compelling" as to

justify my leaving the employ of VITAS. The stress and toll on my morals and ethics as a chaplain became unbearable and the FFS was the *"straw that broke the camel's back."* [41]

As further evidence I made every effort to advocate for patients and families, I presented a document to the DES that VITAS, as a corporation, issued their own directives to all employees which I had been following since my hire from June 17, 2013. Therefore, for sixteen (16) months I had been conscientious in my determination to always do the right thing. I felt this was significant to demonstrate my understanding of bringing the actions of employees to the ***31** attention of management. This document is entitled "Do the *Right Thing - And* Document It" and was published on June 6, 2013. I quote a significant passage:

"Taking care of each other includes helping each other to do the right thing. Know our scope of practice, know compliance issues, speak up when someone may be contemplating taking a short cut, bring your co-worker back to 'doing the right thing' every day with every patient in every situation...don't look the other way. Teach, remind, seek guidance, review new policies and new standards, ask questions, keep each other compliant, knowing that VITAS standards and protocols are in place to help us meet rules and requirements while ultimately putting patients and families first, and in the end delivering care of the highest quality." [42]

I submit that the forgoing discussion affirms *I did not leave my job voluntarily without good cause.*

POINT III ARGUMENT

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:

- OSHA 29 C.F.R. § 654

***32** in that, the failure of VITAS to provide a workplace free of violence is sufficient reason for any employee to leave the employ of said employer while remaining fully qualified for unemployment benefits.

I faced ridicule, anger, and violence from Mr. Campbell over the course of five (5) months. I maintain that I deserved a safe and inviting atmosphere in which to work but I also maintain that I made a reasonable effort to resolve the conflict and *did not voluntarily leave my job without good cause.*

Although there are no Federal or State (Missouri) statutes specifying laws or regulations against workplace violence, the closest may be found in that from OSHA 29 C.F.R. § 654. On the OSHA website the following may be found: "Under the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act (OSHA) of 1970, employers are required to provide their employees with a place of employment that "is free from recognizable hazards that are causing or likely to cause death or serious harm to employees." [43] The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of *conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to* ***33** *cause,* death or serious physical harm to employees when there is a feasible method to abate the hazard." [44] (emphasis added).

Although there are no Federal or State "authorities" to cite in regards to this brief, I offer excerpts from the VITAS Employee Handbook which may be found in documents I provided to the DES at the time of the first hearing. [45] [NOTE: This handbook is given to each employee upon hire and each employee is required to sign an affidavit stating they have read and understood its content.]

As a summary of the Employee Handbook:

i.) Violation of "Employee Conduct Work Rule #12" is instructive where it states "[it is a violation for one] engaging in acts of violence, fighting or threats towards persons..." [46]

ii.) Violation of "Security, Safety, and Health Rules Against Violence in the Workplace" is instructive where it states "VITAS is committed to providing a physically and emotionally safe working environment for its employees and is *committed to zero tolerance of violence in the workplace."* [47] (emphasis added)

The foregoing statutes and VITAS policies outline what should have been an atmosphere of safety which never materialized after Mr. Campbell arrived.

***34** In item 1 of my resignation letter which was provided to the DES in my initial claim, I point out the event occurring just one day before which assisted in precipitating my decision to resign. [48] Excerpts pertinent to this argument for Point III are:

1.) "As recently as Tuesday, October 14, 2014, I have been informed that Mr. Campbell libeled [slandered] me during the Team meeting in the presence of a large number of the team implying that it is I who has refused to communicate and work within the program for the betterment of patients, families, and staff. I am told that he made this implication not once, but three times in the same meeting. This is an untrue and an inaccurate representation of my work ethic and demeanor. These difficulties have gone on for better than six (6) months. I deserved a safe and inviting atmosphere in which to perform my duties but this never occurred." [49]

Workplace violence is a serious and devastating fact that occurs in some situations and when it occurs it is real, substantial, and not whimsical and it requires a person to take all measures possible to face it with reasonableness and maturity. This describes the situation I faced at VITAS and my attitude towards it.

***35** Case law supporting the fact that "good cause" was evident in my resigning my position may be found in *Belle St. Bank.* [50] In that case the Court stated: "To constitute good cause, the circumstances motivating an employee to voluntarily terminate employment must be real not imaginary, substantial not trifling, and reasonable not whimsical,... The standard as to what constitutes good cause is a standard of reasonableness as applied to the average man or woman, and not the supersensitive." [51]

Thus, the documentation I provided to the DES supports the review based on the OSHA Standard and VITAS policies, that a workplace free of violence required by those standards and policies *was not provided by VITAS for at least the last five (5) months prior to my resignation.*

During the hearing, VITAS representative, Ms. Cash-Haney, did not object to the admission of the Claimant's Exhibit 1 as evidence when asked by the Referee. [52] She stated she had no exhibits to present. [53] She did, however, refute the evidence of the assault in my office in the following excerpt from the transcript: [54]

Q [Appeals Referee]: What more would you like to tell me today Ms. Cash?
***36** A [VITAS rep]: ".... he states that he was assaulted in his office.That is not true."

Q: Were you present?

A: I was actually in the office; I could hear him yelling from my office, uh, I was approached by the team manager at the time, Theresa B[etterton], explaining to me that we needed to go over there because Clyde was yelling at another employee."

Q: Anything further Ms. Cash?

A: Uh yes.... [but she offered nothing further about the actual assault]

Therefore, I maintain that, since Ms. Cash[-Haney] did not say more about the actual assault nor did she present any evidence to the contrary, that my rendering of it via a verbatim which I entered as evidence is the true and accurate renderin. [55]

A reading of that verbatim will show that the altercation took place; that it was I who attempted to deescalate the confrontation through proper methods of conflict management skills; that it was Theresa Betterton who would have had the best information; and that the employee concludes the altercation with a very psychologically unhealthy statement, “I am not an inappropriate chaplain!” [56] The ***37** narcissism is more than clear in a comment such as he made which indicates he took the objections to his actions as a personal attack which it was not.

I also submitted as evidence the Code of Ethics of the Association of Professional Chaplains to the DES in an effort to demonstrate the usual and expected ethical response of a chaplain to questions of integrity. [57] Excerpts are instructive:

“130.12 Members shall demonstrate respect for the opinions, beliefs and professional endeavors of other members.
130.13 Members shall affirm the religious and spiritual freedom of all persons and refrain from imposing doctrinal positions or spiritual practices on persons whom they encounter in their professional role as chaplain.

130.44 Members shall take responsible action when they become aware that they themselves or another member is impaired or otherwise unable to maintain the Association's Code of Ethics or Standards of professional competency.” (emphasis added).

The two comments which Mr. Campbell found so objectionable at the time of the assault were these: [58]

***38** 1.) “The use of the bag [used in a talk on spirituality in team meeting] with only Christian crosses in the Team room was inappropriate!”
2.) We chaplains ALWAYS secure coverage for our PTO before we schedule it! It is protocol!

These were never intended to cause such an angry, vitriolic response but more so, in answer to the Code of Ethics for Chaplains, to demonstrate the maturity expected of chaplains to accept criticism.

As relates to my unemployment claim, and using *Tin Man* [59], the Court found that “to establish good faith the employee must prove an effort was made to resolve the dispute before resorting to the drastic remedy of quitting his or her job.” I maintain that my actions in regards to Mr. Campbell do rise to the level of proof that I made a more than reasonable effort to resolve any dispute over the course of five (5) months, made a direct amend to him in the presence of superiors, attempted to develop collegiality through a variety of ways, and, thus, *did not leave my job voluntarily without good cause.* [60]

POINT IV ARGUMENT

The DES erred in ruling a disqualification of unemployment benefits under 288.050 RSMo, because it can be proven that the claimant did not leave ***39** work with the employer voluntarily without good cause and should be authorized for review applicable to the following Statutes:
- 19 C.S.R. 30-35.010

in that, the failure of VITAS to provide a workplace adhering to the Missouri State Statutes for the accurate and timely documentation of hospice records while holding me responsible for oversight of the compliance to these is sufficient reason for any employee to leave the employ of said employer while remaining fully qualified for unemployment benefits.

To begin an argument on this point, let me state some particulars about my reputation with the company prior to my taking on the dual positions I held at the time of my resignation.

I was hired June 17, 2013 as a chaplain for the Missouri team. Within ten (10) months of my hire I was promoted to the dual role of BSM and Chaplain for the Inpatient Unit at Research Medical Center by the GM at a very handsome and respectable pay increase of 10.8%. The GM stated to me that I could "flex my time anyway I wanted as long as I got the job done" and she was "so pleased I had accepted the position." I took this to be information she had provided to the other managers so that they would be aware that I was working my own hours. This evidently was not the case and I was severely called down by PCA, Brenda ***40** Andrascik, on my schedule as evidenced in the document I provided to the DES detailing her reprimand. [61]

In answer to the reprimand, I began to provide a schedule as requested and conformed that schedule to the hours demanded but was subjected to rude demands from the PCAs if it was not suitable to their liking.

I accepted the limitations on my role as BSM in which I was told I would have no "indirect" management or direction of any personnel (although the information from the outgoing BSM said differently); [62] This resulted in serious and explosive issues with Mr. Campbell as he took any communications from me as my trying to "supervise" him. [63] This limited and "indirect" line of authority eventually led to the physical and verbal assault in my office which has been presented in this brief previously. [64]

I accepted that I was the only person to facilitate all the Grief Support Groups which had been mandated by the GM to increase our commitment to the community bereavement program. The GM had approved four (4) bereavement support groups which were active at the time I resigned. The demand from the GM was to increase these beyond the four (4) as need was determined by the Marketing ***41** representatives. The demand for my time and many afterhours was becoming overwhelming and I continued to make my needs known to GM, PCA, TMG, and even the Senior Internal Consultant of Bereavement & Volunteer Services Manager, Rebecca Stroud that I needed the assistance of chaplains and social workers to cover the growing pressures and stress this was causing. [65]

And finally, I accepted the limited role I had in regards to the Missouri team's compliance with internal VITAS standards and the various Federal and State Regulations. Missouri 19 C.S.R. 30-35.010(2)(K)2 states: "The [patient] record shall be complete, legible, readily accessible and systematically organized to facilitate retrieval. *Documentation shall be prompt and accurate.*" [66] (emphasis added).

The VITAS standard for two forms of bereavement records mandate a three (3) day/seventy-two (72) hour time limit for one form and a fifteen (15) day time limit for the other to meet regulations. Furthermore, once documented, the VITAS standard mandates that these are recorded on the employee's timesheet in the VRU system *on the day the records are written.* I presented to the DES a document from June 2014, detailing three (3) patient records for which Mr. Campbell was responsible, and the fact that these did not meet the Missouri regulations or the ***42** VITAS standards for that month. [67] It was my responsibility to report each month on the compliance of the bereavement program as these were heavily scrutinized by the corporate offices. Records were seriously out of compliance from 6-12 days and this was a violation of Missouri State law!

Following the first report of June 17, 2014, Mr. Campbell evidently was upset when he was coached by the GM regarding his direct failure to comply and complained that he was overwhelmed. An e-mail from the GM dated June 17, 2014, made this clear in which she stated to me: "I feel Michael is overwhelmed and could use some support in his role," [68] and she asked for

me to assist in "brainstorm[ing] on ways of how we can achieve this." [69] My answer to her e-mail, although a well-thought out and serious reply, was met with an accusation by the GM that it was "facetious!" A request for a copy of that reply e-mail for purposes of this unemployment claim was denied by the GM and then also by the Referee by refusing to subpoena records.

Mr. Campbell was not overwhelmed but instead, all the difficulty with him stemmed from the GM's failure to follow VITAS policies. I presented to the DES evidence that clarifies that issue. It concerns the fact that the GM allowed Mr. ***43** Campbell to schedule PTO [paid time off] which was against company policy. [70] That policy states: "Employees are not eligible to use PTO time during their orientation/probationary period." Mr. Campbell was approximately 60 days into a 90 day probationary period at the time of the incident. It was this "entitlement" to which Mr. Campbell felt he was due that escalated into the workplace violence and the physical and verbal assault on me. The error of the GM precipitated the violent attack upon me.

The workplace violence occurred the following day, June 18, 2014, at which time Mr. Campbell stormed my office as documented in a verbatim I provided to the DES at the time of the hearing. [71] I quote from the document in its entirety at this time:

"[To Nichole Cash-Haney, BM] One last thing that has been troubling me is this "workplace violence" assumption that only my actions could be construed as such. I left Julia's [GM] office the morning we spoke [June 20, 2014] with the idea this was going to HR for further consultation and may not be completed. Therefore I want to clarify some "physical" things that happened.

For the record and after realizing the gravity that was attributed to the incident, the "physical" positioning in my office was as follows:

44** ***Michael [Mr. Campbell] asked me in the hallway if he had to make a call to Roger [another chaplain] to secure coverage for his PTO [paid time off] for July 14-16 to which I responded, "Yes, no one ever told me that your PTO extended into the next week." I continued to say that he would need to find coverage

I stepped back into my office.

Michael approached my door and shouted, "Are we going to discuss this? Not in the hallway! Let's get a supervisor!" [Looking down toward Theresa's office] [this is the then TMG].

I motioned for Michael to come into my office and sit down so we could talk about the issue.

I sat down awaiting him to come in and sit. He was pumped with adrenalin.

Michael stormed into my office, lunged at me from the end of my desk and shouted, "What is it you have with me?" [I reared back in my chair and made two statements with a lot of adrenalin pumping.]

Statement one: "The use of the bag with only Christian crosses in the Team room was inappropriate."

Statement two: "We chaplains ALWAYS secure coverage for our PTO before we schedule it! It is protocol!"

***45** Michael maintained his angry stance at the end of my desk refusing to sit down. I remained reared back, out of his way.

[TMG] and [BM] enter the room, [TMG] demanding that the situation deescalate. Michael sat in the chair against the wall and during the time with yourself and Theresa stated, "I am not an inappropriate chalain!"

[TMG] stated that we were to cool down and meet in her office the following morning at 8:30 a.m. [she was Mr. Campbell's immediate supervisor].

I asked, “End of discussion?” [TMG] stated “Yes.”

Incident over.” (emphasis added).

(end of quote)

I continued to perform at a high level of competency and responsibility when I reported on the continued non-compliance again on July 7, 2014.[72] Three additional patient records were out of compliance for 5 - 8 days! Once again, these were patients for which Mr. Campbell was responsible.

As a summary of this Point VI:
1.) I provided a schedule as requested and conformed that schedule to the hours demanded but was subjected to rude demands from the PCAs if it was not suitable to their liking.

***46** 2.) I accepted the limitations on my role as BSM in which I was told I would have no “indirect” management or direction of any personnel.

3.) I accepted that I was the only person to facilitate all the Grief Support Groups which had been mandated by the GM to increase our commitment to the community bereavement program and dealt with the stress as best I could.

4.) I lost twenty five (25) pounds and four (4) pant sizes in the four months before resigning. My health was declining due to the pressure, the stress, and the constant abuse from Mr. Campbell. No one seemed to care.

5.) And finally, I accepted the limited role I had in regards to the Missouri team's non-compliance with the various Federal and State Regulations, particularly for Missouri 19 C.S.R. 30-35.010 and internal VITAS standards.

I submit to the Court that I did all I possibly could and, although I resigned, I *did not leave my job voluntarily without good cause*.

***47 CONCLUSION - REMEDY**

I ask for four remedies to be granted from the Court as follows:

Remedy I

The decision by the DES shall be reversed and unemployment payments authorized per DES procedures shall be initiated immediately upon reversal.

Remedy II

VITAS will submit ALL unedited, as-issued, “on-call” calendars for the calendar years 2013 and 2014 to the appellant for his determination of all “on-call” hours he worked for the hospice for both years. This shall include:
a. All “on-call” hours worked as Chaplain between (6/17/13 - 4/15/14)

.b. All “on-call” hours worked as dual role of Bereavement Services Manager/ Chaplain between 4/15/14 - 10/15/14)

c. In the event calendars cannot be produced by VITAS as prescribed, the total "on-call" hours shall be set at 750 for purposes of determining hours to be used in Remedy III below.

Remedy III

VITAS will pay the minimum $7.25/hour for ALL "on-call" hours determined in Remedy II.

Remedy IV

VITAS shall pay compensation for mental and physical stress of appellant in the amount of six (6) months of full salary to match the timeframe from resignation to this appeal.

Alternate Remedy V

Should the Court find no compensation under Remedy II, III, of IV, I ask the Court to lift the prohibition on the use of the materials presented in the case for further litigation as the packet of information issued for the original hearing is marked **PROHIBITED** by law for any other purpose.

Footnotes

1 (1.f 006, 019)
2 *(Id.)*
3 (1.f. 024-026)
4 (t.r.091)
5 (1.f. 025)
6 (1.f 020)
7 (Id.)
8 Referee quotes "good cause shall include **only** that cause...." from 288.050.1(1) RSMo as printed on page 020 of the legal file.
9 (1.f. 008, 013), (t.r. 075, 080)
10 *Lindow v. United States* (738 F.2d 1057) relying on Fox v. Summit King Mines, 143 F.2d 926, 932 (9th Cir.1944)
11 *Lindow v. United States* (738 F.2d 1057) *relying on Forrester v. Roth's I.G.A. Foodliner Inc.*, (646 F.2d 413 414 (9th Cir. 1944))
12 (t.r. 029-030)
13 (1.f. 025)
14 (Appendix A20)
15 (Appendix A22)
16 (t.r. 102)
17 (Appendix, A01-A10)
18 (t.r. 001 - 105) will indicate no attempt was made by the Referee to address any issue, particularly on pay.
19 *Costa v. VITAS Healthcare Corporation of California,* Case No. BC313552 (filed April 8, 2004) (Settlement)
20 *Bernedette Santos et. al. v. VITAS Healthcare Corporation of CA, et. al.* BC359356
21 (Appendix A16)
22 *Kinzeler v. Vitas Healthcare Corporation of Ohio,* No. 1:2012cv00659 Document 47 (S.D. Ohio 2014) (Settlement)
23 *(Id.)*
24 *(Id.)*
25 *Kinzeler v. Vitas Healthcare Corporation of Ohio,* No. 1:2012cv00659 - Document 47 (S.D. Ohio 2014)

26 *Clark v. L.I.R.C, (*875 S.W.2d 624 (Mo. Ct. App. 1994)
27 (t.r. 016-017)
28 *(Id.)*
29 (1.f. 010, 015), (t.r. 077, 082, 089)
30 (Appendix A11)
31 (t.r. 044-070)
32 (t.r. 059)
33 (Appendix A15)
34 (t.r. 056-058)
35 (t.r. 058)
36 (Appendix A09)
37 (Appendix A08-A09)
38 (Appendix, A31-A32)
39 (Appendix A14)
40 *Clark v. Labor & Indus. Relations Comm 'n* (L.I.R.C.), (875 S.W.2d 624 (Mo. Ct. App. 1994))
41 (t.r. 091)
42 (t.r. 044)
43 (Appendix A30)
44 https://www.osha.gov/SLTC/workplaceviolence/standards.html
45 (t.r. 045-050)
46 (t.r. 046)
47 (t.r. 050)
48 (1.f. 009, 014), (t.r. 076, 081, 088)
49 *(Id.)*
50 *Belle St. Bank v. Indus. Commission, Div. of Emp. Sec.*, 547 S.W.2d 841 (1977)
51 *(Id.)*
52 (t.r. 026)
53 (t.r. 035)
54 (t.r. 033)
55 (t.r. 069)
56 *(Id.)*
57 (t.r. 064-068)
58 (t.r. 069)
59 *Tin Man v. Labor and Industrial Relations Commission*, 866 S.W.2d 149 (1993)
60 (1.f. 009, 014), (t.r. 076, 081, 088)
61 (t.r. 060)
62 (t.r. 027-028, 070) the BSM stated in a text message: to tell you that the BSM is not expected to run groups[,] do all event and staff support alone. The chaplains and social workers are your team and help with that."
63 (1.f. 004, 009), (t.r. 076, 081, 088)
64 (t.r. 069)
65 (1.f. 009-010, 014-015), (t.r. 076-077, 081-082, 088-089)
66 **(Appendix A12)**
67 (t.r. 061, 063)
68 (t.r. 062)
69 (t.r. 062)
70 (t.r. 045)
71 (t.r. 069)
72 (t.r. 063)

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