



State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

Request for Quotation

RFQ NUMBER
WWV10867

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
FRANK WHITTAKER 304-558-2316

RFQ COPY
TYPE NAME/ADDRESS HERE

BUREAU OF EMPLOYMENT PROGRAMS
OFFICE OF ADMIN. SUPPORT-5302

112 CALIFORNIA AVENUE
CHARLESTON, WV
25305-0112 558-2634

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
05/26/2010				

BID OPENING DATE:

06/24/2010

BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	LS	961-24			
COURT REPORTING SERVICES						
THE WEST VIRGINIA PURCHASING DIVISION, FOR THE AGENCY, WORKFORCE WEST VIRGINIA. IS SOLICITING BIDS FOR TRANSCRIPTION SERVICES PER THE ATTACHED SPECIFICATIONS.						
ALL TECHNICAL QUESTIONS MUST BE SUBMITTED IN WRITING T FRANK WHITTAKER IN THE WEST VIRGINIA PURCHASING DIVISION VIA EMAIL AT FRANK.M.WHITTAKER@WV.GOV CC KRISTA.S.FERRELL@WV.GOV OR VIA FAX AT 304-558-4115. DEADLINE FOR TECHNICAL QUESTIONS IS 06/09/2010 AT THE CLOSE OF BUSINESS. ALL TECHNICAL QUESTIONS WILL BE ADDRESSED BY ADDENDUM AFTER THE DEADLINE.						
EXHIBIT 3						
LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AND EXTENDS FOR A PERIOD OF ONE (1) YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.						
UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.						
RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
 2. The State may accept or reject in part, or in whole, any bid.
 3. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
 4. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods this Purchase Order/Contract becomes void and of no effect after June 30.
 5. Payment may only be made after the delivery and acceptance of goods or services.
 6. Interest may be paid for late payment in accordance with the *West Virginia Code*.
 7. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
 8. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
 9. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
 10. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern the purchasing process.
 11. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
 12. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, the State may deem this contract null and void, and terminate such contract without further order.
 13. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, is available online at www.state.wv.us/admin/purchase/vrc/hipaa.htm and is hereby made part of the agreement. Provided that the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
 14. **CONFIDENTIALITY:** The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/noticeConfidentiality.pdf>.
 15. **LICENSING:** Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, and the West Virginia Insurance Commission. The vendor must provide all necessary releases to obtain information to enable the director or spending unit to verify that the vendor is licensed and in good standing with the above entities.
 16. **ANTITRUST:** In submitting a bid to any agency for the State of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the State of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.
- I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, or person or entity submitting a bid for the same material, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division. Complete all sections of the quotation form.
2. Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Unit prices shall prevail in case of discrepancy. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
4. All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130
5. Communication during the solicitation, bid, evaluation or award periods, except through the Purchasing Division, is strictly prohibited (W.Va. C.S.R. §148-1-6.6).



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01:30PM

LINE	QUANTITY	UOP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THE STATE MAY DEEM THE CONTRACT NULL AND VOID, AND TERMINATE SUCH CONTRACT WITHOUT FURTHER ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
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BUREAU OF EMPLOYMENT PROGRAMS
OFFICE OF ADMIN. SUPPORT-5302

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SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.						
REV. 05/26/2009						
NOTICE						
A SIGNED BID MUST BE SUBMITTED TO:						
DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130						
THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:						
SEALED BID						
BUYER: 44						
RFQ. NO.: WWV10867						
BID OPENING DATE: 06/24/10						
BID OPENING TIME: 1:30 PM						

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PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						

CONTACT PERSON (PLEASE PRINT CLEARLY):						

***** THIS IS THE END OF RFQ WWV10867 ***** TOTAL: _____						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

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STATE OF WEST VIRGINIA
WORKFORCE West Virginia
REQUEST FOR QUOTATIONS
WWV-10-867 (Transcription Services)

1. GENERAL INFORMATION

1.1 Project:

Transcribing of Hearings

The Board of Review conducts hearings that are recorded on cassette tape or digital recording to be transcribed. The specific number of hearings held varies from month to month. The Board of Review estimates 700 hearings to be transcribed per month. (Attachment A)
Transcripts shall be typed in the following manner:

- The first page shall have 1" margin
- All subsequent pages shall have header on line 5 leaving 5/8" margin at top. All pages shall have 1" margin on left and 5/8" margin on the right side.
- Single spacing Questions and Answer format
- Arial 12 point Font type and size
- Index of Direct, Cross, Redirect, Recross, etc. on second page
- Certification on last page
- Header with claimant name and claim number
- The first typing line is line 8 on all pages after first and end on line 59 leaving 51 typing lines per page.
- Index of key words at the end of the transcript.

The completed transcripts shall be printed on 8.5" by 11", 20#, White Bond as "mini pages" using four-to-a-page formatting compatible with MS Word 2007.

Typing of Decisions/Orders

Approximately 4,500 decisions are issued by the Board of Review per year. They have approximately seven individuals holding hearings and dictating decisions. These decisions vary in length from two (2) pages to as many as five (5) pages. A "typical" decision is three (3) pages. Decisions shall be typed in the following manner:

- The first page shall have a 1" margin at the top.
- All subsequent pages shall have a header on line 5, leaving a 5/8" margin at the top. All pages will have a 1" margin on the left-hand side and a 3/4" margin on the right hand side of each page.
- Single-spaced with appropriate paragraphing.
- Arial 12 point Font type and size.
- The first typing line on page 1 is "7" and shall end at approximately "59", for 52 typing lines on page 1.
- All subsequent pages shall begin on line "8" and end approximately on line "59" leaving 51 typing lines per page.

"Standard" decisions are attached to this RFQ for the Board of Review (Attachment B) to show the form of the respective decision/orders. Hearings transcribed from cassettes and those transcribed from phone or other electronic format will be prepared in this format.

The persons dictating decisions/orders will reference certain preformatted language. The Board of Review will provide this language to the successful vendor for insertion into the decision/orders. The board of Review will update and change the preformatted language as necessary.

The successful bidder must provide toll-free receipt of the dictation of the decisions/orders by employees of the board of Review.

The vendor must have the ability to accommodate the possibility that all decisions/orders writers may be dictating simultaneously. A sufficient number of lines shall be available in place to accommodate all employees dictating simultaneously. All cost necessary to accommodate this level of dictation, is a cost of doing business with the agency similar to all overhead and must be calculated with the vendor's price/cost per page quotation.

1.2 Price quotations

The price(s) quoted in the bidder's response will not be subject to any increase and will be considered firm for the life of the contract.

2. SCOPE OF WORK

2.1 Decisions Orders from Cassette Tapes

The successful vendor will transcribe decision/orders from cassette tapes or digital recordings if telephone communication or other electronic means is unavailable due to malfunction of equipment. If vendor's equipment malfunctions, the equipment must be repaired with a maximum of three (3) working days. The cassettes shall be delivered via U.S. Mail to the successful vendor at the mailing address specified by the vendor, unless other arrangements are mutually agreed to by the vendor and the Board of Review. Also, the vendor must be available for in-person pick-up of cassettes each day. The pick-up location will be in the Charleston, West Virginia area.

2.2 Electronic Transfer of Document

The vendor must have the ability to electronically mail decisions/transcripts to Board of Review in format compatible with the Board of Review software such as Word 2007.

1. The vendor must have the ability to electronically mail the typed decision/order to the electronic mail address provided by the Board of Review for printing at the local office within 48 hours of receiving the dictation. For example, a decision dictated by 5:00 p.m. on Friday must be transcribed and returned to the Board of Review no later than 5:00 p.m. on Tuesday. The Vendor selected must indicate the security in place for electronic transfer of information encrypting data in transit equivalent to or better than SSL3.0(Secure Socket Layer) .

The successful vendor will retain a "copy" of the electronically transmitted documents for a 45-day period. The successful vendor will provide to the Board of Review the previous month's transcription of decision/orders on a mass magnetic storage device (such as a compact disc) within ten (10) days of the end of each month.

If electronic mail is unavailable for a 24-hour period, the successful vendor shall deliver the transcribed decision/orders to the Board of review by magnetic mass storage device (such as a compact disc).

2.3 Retention and Confidentiality

The successful vendor agrees to keep all dictation of hearings transcripts and decisions/orders, and any voluntary storage of those materials confidential. This shall include, but shall not be limited to: ensuring that all data stored on any computer, server or other digital storage devices is protected via the then current encoding/firewall protection against potential hacking; all employees shall be bonded; and, all hard copies of documentation shall be secured away from public access and viewing.

The successful vendor is not required to keep the transcribed materials stored for any specified period of time and shall only store it for whatever standard period of time the vendor deems appropriate for their internal needs.

2.4 Accuracy

The quality of the decisions/orders/transcripts shall be subject to a quality review by the Board of Review. If the quality of the documents falls below 95% accuracy or if there is a consistent loss of dictations material (either to or from the Board of Review and the successful vendor), and contract resulting from this RFQ may be terminated.

The Board of Review considers three or more errors per page of typed decision/order/transcript to exceed an acceptable level. This includes typing, grammar and English context or spelling errors. If the vendor fails to cure the problem and the contract is terminated, all work in progress shall be delivered to the Board of Review.

2.5 Prioritization

Vendor must accommodate the requirements of the Board of Review to prioritize work and comply with special requests regarding the order in which dictations are transcribed.

2.6 Indexing

The vendor will provide keyword indexing at the end of each transcript. The indexing will be an alphabetical listing of all words in the transcript, their page number (in parenthesis) and their line number. For example, see Attachment C.

2.7 Copying

The vendor will provide multiple copies of transcribed documents as requested by the Board of Review.

2.8 Qualifications

Vendor must have a minimum of five (5) years experience in doing legal and medical transcription.

3. COST PROPOSAL

	Estimated Annual Pages*		Price Per Page	Cost
Transcribing Hearings from Cassette Tapes or Digital Recordings	30,000	x	_____	_____
Transcribing Telephone Dictation	7,000	x	_____	_____
Typing of Decisions/Orders	20,000	x	_____	_____
Documentation copying (extra copies of transcripts)	300,000	x	_____	_____
TOTAL				_____

*Estimates are for calculating purposes only.

Attachment A

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IN THE MATTER OF:

CASE NO. R.10-0137

EMPLOYER:

AT: TELEPHONIC HEARING, WEST VIRGINIA

DATE: FEBRUARY 19, 2010

BEFORE: ADMINISTRATIVE LAW JUDGE
BOARD OF REVIEW
WORKFORCE West Virginia

APPEARANCES:
CLAIMANT APPEARED
TELEPHONICALLY

L S Services
(740) 377-9411

INDEX

EMPLOYER APPEARED
TELEPHONICALLY BY
FIELD OPERATIONS; AND
SUPERVISOR

TRANSCRIBED BY:

L S Services
(740) 377-9411

FISHER

INDEX

TESTIMONY

WITNESS	EXAMINED BY	PAGE
	JUDGE	9
	CLAIMANT	15
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	JUDGE	20
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EXHIBITS

ALJ EXHIBIT 1	7
ALJ EXHIBIT 2	7

ALL EXHIBITS LOCATED AT END OF TRANSCRIPT

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The Employer appealed from the decision of the deputy at Mercer County, West Virginia, dated January 4, 2010, which held: "Claimant not disqualified; discharged but not for misconduct."

The Claimant then appealed from the decision of the Administrative Law Judge which held: "The decision of the deputy is reversed. The Claimant is disqualified. The Claimant was discharged for gross misconduct. The Claimant is disqualified until he returns to covered employment and has been employed therein at least thirty working days."

"This decision, if it becomes final, may result in an overpayment of benefits to the Claimant, which will be collected as provided for in the Statute."

"If West Virginia is in an Extended Benefit Period when your

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regular benefits are exhausted, this decision, if it becomes final, will have the effect of denying entitlement to Extended Benefits in accordance with the West Virginia Unemployment Compensation Law [§21A-6A-1(12) (G)]."

JUDGE: This is the unemployment hearing for [REDACTED]

[REDACTED] The Employer is [REDACTED].
Today's date is [REDACTED].

The hearing is being held telephonically before [REDACTED] Administrative Law Judge, from the Employer's appeal of the decision of the Deputy Commissioner finding Claimant eligible; Claimant not disqualified. Claimant discharged but not for misconduct.

The issue in this case is whether the Claimant left his job

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with good cause involving fault on the part of the Employer or whether he was discharged for misconduct. And if there was misconduct, whether it was simple or gross misconduct.

The Claimant appears telephonically. The Employer appears by [REDACTED] Field Operations and [REDACTED] Compliance Officer.

Would you all raise your right hands, please? Do you swear or affirm that in the matter now in hearing you'll speak the truth, the whole truth, and nothing but the truth?

WITNESSES: (Each answered in the affirmative.)

JUDGE: Prior to the hearing the parties had an opportunity to review the deputy's decision and fact-finding report in this case; is that correct, Mr.

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CLAIMANT: Yes, Your Honor.

JUDGE: [REDACTED], is that correct?

MR. [REDACTED]: Yes, sir.

JUDGE: Any objections to making those documents part of the record of this hearing?

CLAIMANT: No, sir.

MR. [REDACTED]: No, sir.

JUDGE: There being no objections, the deputy's decision and fact-finding report are admitted as ALJ Exhibits 1 and 2.

(WHEREUPON, the documents referred to were marked as ALJ Exhibits 1 and 2, respectively, and received into evidence.)

JUDGE: This is a case in which the deputy found that the Claimant was discharged. In a discharge case, the Employer has the burden of proving the Claimant

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was guilty of misconduct.

Simple misconduct is a six-weeks disqualification. Gross misconduct is a disqualification until he returns to work and is employed in covered employment at least 30 working days. If there is no misconduct, there is no disqualification.

The Employer will present its evidence first. After the witnesses testify, [REDACTED], I'll give you an opportunity to ask any questions you might have.

After the Employer concludes its case, then the Claimant will present his evidence. He will likewise be subject to cross-examination.

The Employer will not be permitted to directly cross-examine the Claimant in this case. To avoid the unauthorized practice of law, if they have any questions,

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I'll repeat the question back to him.

At the conclusion of this hearing you'll have a written decision in about two to three weeks. Are there any questions of the issues or procedures before we start?

CLAIMANT: No.

MR. [REDACTED]: No.

JUDGE: Who will testify first for the Employer?

MR. [REDACTED]: I will, [REDACTED]

(Witness Sworn)

WHEREUPON, [REDACTED], called as a witness, being first duly sworn to tell the truth, testified as follows:

EXAMINATION

BY JUDGE:

Q Mr. [REDACTED] you are - what is your title, sir?

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A Director [REDACTED]

Q And is it correct the Claimant was employed with your company from [REDACTED], to [REDACTED]

A Yes, sir.

Q He was a field manager earning [REDACTED] a week?

A Yes, sir.

Q What type of work do you do, sir, your company?

A We are a field services provider [REDACTED], servicing and upgrading [REDACTED] for [REDACTED]

Q All right. Was the Claimant fired?

A No, sir.

Q Why is he no longer employed there?

A Well, we sent two supervisors to his home to speak to him about his job performance. He became belligerent and physically

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confrontational. At that point we recovered the equipment from him and have not heard from him since.

Q When you say you recovered the equipment from him, what equipment?

A As a manager in our company he had been issued a company vehicle, laptop, camera, phone. We had taken the van with us that night. We attempted to recover the rest of his equipment. He did not turn that in and has still not turned that in. But we did recover his vehicle.

Q Well, when you recovered the vehicle, was he told he was discharged or what was the status of his employment at that time?

A He actually - he was actually not told anything. He left the site before any further communication was - we were able to have any further communication with

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him.

Two supervisors showed up at his house that night to speak with him after he become physically confrontational. They contacted the police. The police showed up. [REDACTED] spoke with them first and then the police left before we had - our supervisors had a chance to speak with them.

At that point [REDACTED] got in his personal vehicle and drove away.

Q So you took your van at that - your vehicle at that point?

A Yes, sir.

Q And you've never heard back from him?

A Correct.

JUDGE: All right. If the evidence shows the Claimant quit, then the Claimant has the burden of showing he left his job with good cause involving fault on the part

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of the Employer.

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If he left with Employer fault, he's entitled to benefits. If there's no Employer fault, he'll be disqualified until he returns to work and is employed in covered employment for 30 working days.

Do either of you have any questions about what I just advised you?

MR. [REDACTED]: No, sir.

JUDGE: All right.

BY JUDGE:

Q Mr. [REDACTED], anything else?

A I would like to point out the documents that you referenced earlier in terms of misconduct. So in terms of simple misconduct, we have a clear trail of written counseling with Mr. [REDACTED]. A written warning from me, another written warning from me.

A signed admission from Mr. [REDACTED] that he had tampered with

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the GPS on his vehicle. A final written warning on the 22nd. Another final written warning on the 26th indicated that we had continued to try to give him chances.

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The next day another written warning followed by a period of six days in which [REDACTED] was completely nonresponsive to e-mails or phone calls from his direct supervisor.

When we sent the two supervisors to his house to speak to him about all of this, that's when the gross misconduct occurred, which was witnessed by [REDACTED] who is the room with me today when [REDACTED] head butted another supervisor in the company, [REDACTED].

JUDGE: All right. Mr. [REDACTED] any questions of Mr. [REDACTED]?

CLAIMANT: Yeah.

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CROSS-EXAMINATION

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BY CLAIMANT:

Q Mr. [REDACTED], you guys said that you did in fact, call the police; is that correct?

MR. [REDACTED]: Sir, is it okay to answer the question directly?

JUDGE: Yes.

MR. [REDACTED]: Yes, that is correct.

CLAIMANT: Your Honor, I have - we contacted the police department and -

JUDGE: Well, that's not the issue, sir. I'm not going to contact the police department. Do you have any other questions?

CLAIMANT: I actually have, Your Honor - we have to subpoena the written statement saying that I was the one that actually called the police -

JUDGE: It's too late - [REDACTED] it's too late to subpoena

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anyone. The hearing has already started. Do you have any other questions of Mr. [REDACTED]?

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CLAIMANT: Right. Well, I was the one that -

JUDGE: It doesn't matter, sir. It doesn't matter who contacted the police, sir. Do you have any other questions?

CLAIMANT: As far as questions, no.

JUDGE: All right. Mr. [REDACTED], do you have anything else before we hear from Mr. [REDACTED]?

MR. [REDACTED]: Yes. I'd like for Mr. [REDACTED] to share what he witnessed in terms of the gross misconduct and physical confrontation.

(Witness Sworn)

WHEREUPON, [REDACTED], called as a witness, being first duly sworn to tell the truth, testified as follows:

EXAMINATION

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BY JUDGE:

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Q Mr. [REDACTED], state your name, sir.

A My full name is [REDACTED]

Q And you're the Compliance Manager?

A That's correct.

Q All right. Were you present on the date of the incident?

A Yes, sir.

Q What was the date? Was that approximately?

A Yes, that's correct.

Q All right. Tell me what you saw happened, sir.

A We arrived at the Claimant's home. We originally knocked on the door with no answer. Once we finally got him to come to his door, I spoke with him and told him that we had another infraction notice and that we were going to discuss his future with the

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company.

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And he became - said he wasn't signing anything. At that point [REDACTED] actually spoke with Mr. Cooper and told him, you know, he was talking with him.

And [REDACTED] became upset and went down the small set of steps in front of his home towards [REDACTED], Mr. [REDACTED]. He pressed his forehead up against [REDACTED]'s forehead and pushed him physically backwards. That's when Mr. [REDACTED] walked away and that's when he called the police.

Q He who?

A Mr. [REDACTED].

Q So when you say he put his forehead on him, what do you mean, he head butted him?

A Yes.

Q And that was his supervisor?

A It was a supervisor with our company, yes, that's correct.

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Q All right. Anything else?

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A No, I believe that's it.

JUDGE: Mr. [REDACTED], any questions?

MR. [REDACTED]: No, sir.

JUDGE: Mr. [REDACTED], any questions?

CLAIMANT: Um - just that - Mr. [REDACTED], if the head butt incident happened like you said it did, why didn't you guys contact the policy, why wasn't a report filed? If somebody got head butted they would've had to file a report -

JUDGE: Mr. [REDACTED], you ask a question and let him respond. You don't ask a question and then answer it for him. Do you have any other questions?

CLAIMANT: No - just why wasn't a report done?

JUDGE: How would he know why the police wouldn't do a report, sir? We don't have any

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evidence of that. Do you have any questions about the incident that happened?

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CLAIMANT: No questions. It didn't happen like -

JUDGE: Mr. [REDACTED], anything further before we hear from Mr. [REDACTED]?

MR. [REDACTED]: No, sir, nothing from the Employer.

(Witness Sworn)

WHEREUPON,

[REDACTED] called as a witness, being first duly sworn to tell the truth, testified as follows:

EXAMINATION

BY JUDGE:

Q Mr. [REDACTED], state your name, please.

A [REDACTED], Your Honor.

Q Tell me your side of what happened, please.

A I'd actually - there were -

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when me and the - the last time I was with the [REDACTED] we was talking to Mr. [REDACTED] and we had the interview with Mr. [REDACTED] talking there about missing work.

The time that I did miss work is when I had an aunt that did die. I'd talked to my boss. He - they were all advised of that. That was during the time that my work was - my mail was not - I never recovered - never answered it during the viewing.

As far as the - you know, the GPS, I was being told right on the spot that if I did not agree to it and I told them that it was not tampered with, I was even showed, you know, they were saying the GPS was not working, I was even showed - you know - they were told, Mr. [REDACTED] and Mr. [REDACTED] was even told by a technician that they did see me over three hours away from

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where - they say my van was setting at my house.

Well, later when we had an interview with Mr. [REDACTED] they said that it never showed that - it didn't show up anything.

At that time I was being told, you know, I either sign that or I was being fired on the spot. I have a - I have a baby and I would not have honestly - you know - I need to keep my job. I definitely wouldn't do anything that would interfere with me losing my job and supporting my baby.

And as far as the incident that night, like I said, there was two days I did not work because of my aunt. I was home. I had just got home. I was still in the uniform. I still had my company coat on.

Mr. [REDACTED] and Mr. [REDACTED] did come to my house. Mr. [REDACTED] - I mean was nice. Mr. [REDACTED] had an

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attitude and requested - you know - there was nothing said about any kind of - any kind of thing to sign. They didn't have any paperwork in their hand or nothing like that.

That wasn't reported - if that's true, that would've been reported with the last interview with Mr. [REDACTED] and it was not. There was no paperwork at all. I've got the paperwork here in my hand that Mr. [REDACTED] - that Mr. [REDACTED], he had brought the last interview. There was nothing in that - nothing like that.

They did come up - I did ask Mr. [REDACTED] - Mr. [REDACTED] - he was becoming kind of belligerent - at that time I asked him to get off my property. He was demanding the keys to my van.

I said you're - I'm a co-manager, you're a co-manager. I

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will talk to Mr. [REDACTED] He is - I do not have a problem with Mr. King at all. He was being professional, being nice, courteous.

We were having conversations that were you know - we were able to have conversations.

At that time Mr. [REDACTED] would not get off. I told him - he said that - I told I'm not giving you the keys. He said well, I'll call the police. I said don't worry, I will call them myself.

At that time, Your Honor, I called the police. That's when Mr. [REDACTED] did leave. He did leave. He got in the van. I talked to Dan a little bit more. [REDACTED] got into the van also.

I went down into the - [REDACTED] was in the passenger seat. Me and him talked for a good ten minutes. The police did come up. He asked who was [REDACTED]. I - me - you

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know - he said you're the caller.
I said yes.

He said what's going on. The complaint is they're not getting off your property. Do you want me to remove them off your property. He said where are they at.

I said the only one - I said they're in the van now. I said you know - I said I'm not saying - the other one I didn't have a problem with. He's the one I'm talking with. I said so everything is okay.

And he asked me a second time are you -

Q Mr. [REDACTED] I don't care what the police told you. The issue is why you're no longer employed there. Is there anything else about why you're not employed there that you want to address?

A What I - Your Honor, that's what basically - I feel the whole

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thing - is over a - they're saying that - you know -

Q I heard what they're saying, so I -

A - somebody -

Q I heard what they're saying, sir. I want to hear your side of it.

A I was fired. And I'm saying that no head butting happened. I'm the one that called the police. My work status, I've got bonus checks - my work status - you know - has been the best of my ability. You know and bonus checks after bonus checks showed that. That's basically all I got.

That's what I feel it's over and that's what the paperwork it showed it's basically - it had to do with that, not in particular -

Q Did you touch the supervisor, sir?

A Negative. No, sir. Not in

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any kind of way, Your Honor.

JUDGE: Mr. [REDACTED], any questions? Mr. [REDACTED], any questions.

MR. [REDACTED] Yes, sir. Mr. [REDACTED] if your understanding that evening that you were wanting to continue your employment, I assume that's why you kept our company property, the computer -

JUDGE: What's the question, sir?

MR. [REDACTED] Sir - Mr. [REDACTED] if you intended - did you keep our company property because you intended or you understood that you were still employed with the company?

CLAIMANT: I don't know what you - I mean - the van - the - all the tools were given - everything that was not given is like what you guys were told what I did not have in my possession.

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JUDGE: Any other questions, Mr. [REDACTED]? The issue is why he's not employed there, not what happened after - what he kept after his separation from employment. Any other questions?

MR. [REDACTED] No, sir. No further questions.

JUDGE: Mr. [REDACTED], anything further?

CLAIMANT: No, Your Honor.

JUDGE: Mr. [REDACTED], anything further?

MR. [REDACTED]: No, sir.

WHEREUPON,

[REDACTED] recalled as a witness, being previously duly sworn to tell the truth, further testified as follows:

RE-EXAMINATION

BY JUDGE:

Q Mr. [REDACTED] let me ask you, did you see firsthand Mr. [REDACTED] touch in any way the other coworker?

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A Yes, sir, I did.

Q What did you see?

A - what I had it was about six to eight steps, I was standing on the top step. Mr. [REDACTED] was standing on the bottom step. Mr. Fisher did come down the steps. He pressed his forehead into Mr. [REDACTED] forehead and he pushed him backwards. At that point Mr. Biltoft walked away.

JUDGE: All right. Mr.

[REDACTED], any questions?

MR. [REDACTED] No, sir.

JUDGE: Mr. [REDACTED], any questions?

CLAIMANT: No, Your Honor. Your Honor, the - that's not what I don't know, Your Honor - I talked to her before hand. She was a neighbor that -

JUDGE: Well, you can't tell me what she said, sir. She's not here and I can't reach her. I

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tried three times to get her on the phone and it rang her voicemail. You can't tell me what the witness said. Do you have any questions of Mr. [REDACTED]

CLAIMANT: No, Your Honor.

JUDGE: Anything further for the record? All right. If there's nothing further, that will conclude this hearing.

The Board will have a written decision to you in about two to three weeks. Thank you very much.

* * * * *

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, TO-WIT:

I hereby certify that the foregoing testimony was taken from a recorded tape and transcribed into the English language to the best of my skill and ability.

This, the [REDACTED] day of [REDACTED], 2010.

[REDACTED]

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Board of Review
WORKFORCE West Virginia
112 California Avenue
Charleston, West Virginia 25305
304-558-2636/1-800-635-0189

Case No.1

IN THE MATTER OF:

Claimant:

S.S. No. :

Address :

Employer:

Address :

This case came on for telephonic hearing before _____, Administrative Law Judge, on _____, 2006.

APPEARANCES:

CLAIMANT appeared telephonically. Employer appeared telephonically by _____

ISSUE:

The Employer appealed from the decision of the _____ dated _____ which held: "Claimant not disqualified; discharged but not for misconduct."

FINDINGS OF FACT:

1. The claimant worked for the above employer as a _____ beginning _____ As part of his duties, and immediately precedent to his separation from employment the claimant was assigned to perform services at an _____ for an _____
2. On Saturday, _____, the claimant was working at the _____ on the _____ shift. Part of his responsibilities was to answer the _____ to direct calls and answer inquiries from employees and _____

3. It is alleged that the claimant failed to _____ on the _____ and also from the _____ who had reportedly called on the public telephone.
4. The claimant denies this. The only evidence proffered to the contrary was hearsay evidence of what the _____ owner had been told. Accordingly, I find the best evidence reveals that the claimant did not fail to answer calls, and was not in dereliction of duty.
5. The _____ any requested that the claimant be replaced and another _____ assigned to the position. They did not wish him to be on the property further.
6. On or about _____, the claimant was terminated from employment. I find no misconduct on his part in connection with the separation.

CONCLUSIONS OF LAW and DISCUSSION:

Chapter 21A-6-3(2) of the West Virginia Code provides that an individual shall be disqualified from receiving unemployment compensation benefits for the week in which he was discharged from his most recent work for misconduct and the six weeks immediately following such week. The Supreme Court of Appeals of West Virginia has defined misconduct to include a willful act on the part of an individual, which is contrary to the best interest of the employer. On the other hand, mere inefficiency, unsatisfactory conduct, failure in job performance as a result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgement or discretion, are not deemed to be misconduct within the meaning of the Code. The burden is on the employer to prove misconduct.

The employer has the burden to establish with competent, reliable and appropriate evidence that an individual committed misconduct. Evidence must be in the form other than total hearsay. The employer's representative at hearing had no personal knowledge of the facts and circumstances other than what he had been told.

The claimant denies these allegations and establishes that he performed his duties at all times to the best of his ability, and any failures were, of necessity, occasioned by failures in either the mine phone or the public telephone service, both of which had occurred at prior times.

The evidence does not preponderant in favor of the employer. The employer has failed to meet its burden. Conversely, I find the claimant's testimony, firsthand, made under oath, and credible. I find that the claimant was guilty of no _____. I agree with the deputy that no disqualification and be imposed.

DECISION:

The decision of the deputy is affirmed. The claimant is not disqualified from receiving unemployment compensation benefits. The claimant was _____ from his most recent employment.

This, the _____th day of _____ 200 .

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VENDOR PREFERENCE CERTIFICATE

Certification and application* is hereby made for Preference in accordance with **West Virginia Code**, §5A-3-37. (Does not apply to construction contracts). **West Virginia Code**, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the **West Virginia Code**. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

1. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 ____ Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or** 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; **or**,
 ____ Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; **or**,

2. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

3. Application is made for 2.5% resident vendor preference for the reason checked:

- ____ Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; **or**,

4. Application is made for 5% resident vendor preference for the reason checked:

- ____ Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; **or**,

5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- ____ Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; **or**,

6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:

- ____ Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years.

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: _____

Signed: _____

Date: _____

Title: _____

*Check any combination of preference consideration(s) indicated above, which you are entitled to receive.

RFQ No. _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Debtor" means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. "Political subdivision" means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. "Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

Under penalty of law for false swearing (*West Virginia Code* §61-5-3), it is hereby certified that the vendor affirms and acknowledges the information in this affidavit and is in compliance with the requirements as stated.

WITNESS THE FOLLOWING SIGNATURE

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20____.

My Commission expires _____, 20____.

AFFIX SEAL HERE

NOTARY PUBLIC _____