

**DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES
STATE OF WASHINGTON**

In re:

BRINDERSON, LLC

NO. 2022-006-APP

ORDER DISMISSING APPEAL

Joel Sacks, Director of the Washington State Department of Labor and Industries, having considered the final order of the Washington State Apprenticeship and Training Council (Council) decided on April 15, 2021, the appeal submitted by Brinderson, LLC, briefing submitted by the parties, and the record created by the Council, issues this Order Dismissing Appeal.

The Director makes the following Findings of Fact, Conclusions of Law, and final Order Dismissing Appeal.

I. FINDINGS OF FACT

1. In 2019, the Legislature adopted legislation requiring that for a company to perform high hazard on-site work in petroleum refineries “[b]y January 1, 2021, at least twenty percent of the skilled journeypersons must be graduates of an apprenticeship program for the applicable occupation approved by the [Council].” RCW 49.80.030(1)(a), .020(1).
2. Brinderson provides maintenance and repair services to Washington’s petroleum refineries.
3. To satisfy the new law, Brinderson filed proposed apprenticeship standards in August 26, 2019. The Council approved the proposed program during its quarterly meeting on April 21, 2020.
4. Brinderson sought a waiver or variance from the “six-month rule” in WAC 296-05-003, which provides “[t]o be eligible for a certificate of completion, an apprentice must have been registered with the department and an active participant of a committee’s program for at least six months and have successfully

completed their apprenticeship.” If granted the waiver or variance, Brinderson could immediately graduate apprentices it saw as fully trained even if they had spent less than six months in its program.

5. The Council allowed oral argument on this issue at its quarterly meeting on April 15, 2021. The Council denied the variance request. Brinderson appealed.
6. The Director requested briefing. On October 26, 2021, the Director requested further briefing addressing whether the appeal was moot given that Brinderson would have enrolled its workers as apprentices under WAC 296-05-003, and that they would have had the opportunity to meet the apprenticeship criteria.
7. Brinderson provided a response on November 30, 2021, that indicated it had seven apprentices who either have or will soon be completing the required six months’ time at the least in December. It requested that the “program should be granted a reasonable time through December before the appeal is considered moot.” Brinderson Position: Mootness at 1 (Nov. 30, 2021).
8. On January 11, 2022, counsel for the Director sent a letter stating “In response to the Director’s letter about mootness, Brinderson filed a response on November 30, 2021, that indicated that Brinderson’s apprenticeship process would be complete in December. I am writing to confirm that has occurred, and that Brinderson’s appeal is now moot. If you believe it is not moot, please explain by January 25, 2022.”
9. No response was received by January 25, 2022.

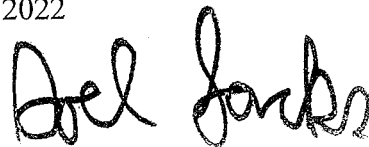
II. CONCLUSIONS OF LAW

1. Brinderson has complied with the six-month rule, so the question of whether there was jurisdiction to consider its waiver request is now moot.
2. Brinderson had the opportunity to contest a ruling of mootness, and by its failure to demonstrate why the matter would not be moot, has waived the issue.
3. Given the appeal is moot, it is dismissed.

III. DECISION AND ORDER DISMISSING APPEAL

Consistent with the above Findings of Fact and Conclusions of Law, Brinderson’s appeal is DISMISSED.

DATED at Tumwater this 15 day of February 2022



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail.
RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by emailing it to directorappeal@lni.wa.gov or by mailing or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition or (b) serve the parties with a written notice specifying the date by which the Director will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.04.065(3) provides, "Orders that are not appealed within the time period specified in this section and chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in RCW 34.05, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

I, Lisa Deck, declare under penalty of perjury under the laws of the State of Washington that the Director's order was sent via email and U.S. Mail, postage pre-paid, on the 15 day of February 2022 to the following:

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DATED this 15 day February 2022, at Tumwater, Washington.



LISA DECK