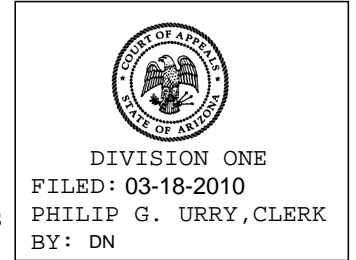


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



JOHN R. LEGGAT,) Court of Appeals
) Division One
Appellant,) 1 CA-UB 09-0143
)
v.) Maricopa County
) A.D.E.S. Appeals Board
ARIZONA DEPARTMENT OF ECONOMIC) No. U-1104389-BR
SECURITY, an Agency,)
) Department B
Appellee.)
) **DECISION ORDER**
)

Pursuant to Arizona Revised Statutes ("A.R.S.")
section 41-1993 (Supp. 2009),

IT IS ORDERED denying the application for appeal,
and the decision of the Appeals Board is final. The
applicable statute provides: "the department may waive all or
a portion of the amount overpaid." A.R.S. § 23-787(C) (Supp.
2009) (emphasis added). We conclude this standard would not
afford the court power to reverse the decision to recapture
the overpayment. Accordingly, further briefing would be
futile as a matter of law.

IT IS FURTHER ORDERED directing the clerk of this court to return the request for review and supporting documents to the clerk of the A.D.E.S. Appeals Board.

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge

NORRIS, Judge, dissenting.

Respectfully, I dissent from the majority's decision to deny the application for appeal. The applicant has raised a meritorious argument concerning the interpretation of the "equity and good conscience" standard of A.R.S. § 23-787(C). Although we defer to factual findings of an administrative agency, and an agency's interpretation of a statute or its own regulations is entitled to great weight, we are nevertheless "free to draw our own legal conclusions in determining if the appeals board properly interpreted the law." *Capitol Castings v. Ariz. Dep't of Econ. Sec.*, 171 Ariz. 57, 60, 828 P.2d 781, 784 (App. 1992) (citation omitted). The record reveals the Appeals Board has construed the "equity and good conscience" standard narrowly to permit "waiver of repayment only when the

degree of hardship is extreme." Whether such a narrow construction is legally proper is an issue of law that should be resolved by an appellate court -- either this court or our supreme court. See ARCAP (Arizona Rule of Civil Appellate Procedure) 32. Thus, whether the Appeals Board has properly applied the law to the facts of this case is an open question. I therefore disagree further briefing would be futile as a matter of law.

/s/

PATRICIA K. NORRIS, Presiding Judge