

1970

Martin J. Martinez v. Department of Employment Security of the State of Utah : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARTIN J. MARTINEZ, :

Appellant, :

-vs- :

Case No. 12054

DEPARTMENT OF EMPLOYMENT :

SECURITY OF THE STATE OF :

UTAH, :

Respondent. :

BRIEF OF APPELLANT

On Petition for Review by the Supreme Court
of the Decision of the Department of Employ-
ment Security of the State of Utah

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FILED

JUN 10 1970

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARTIN J. MARTINEZ,

:

Appellant,

:

-vs-

:

Case No. 12054

DEPARTMENT OF EMPLOYMENT
SECURITY OF THE STATE OF
UTAH,

:

:

Respondent.

:

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

This is an appeal from a decision of the Department of Employment Security, denying appellant unemployment benefits for the period September 14, 1969, to October 1, 1969.

DISPOSITION OF CASE BELOW

By final decision dated March 18, 1970, the Board of Review affirmed the decision of the Appeals Referee dated December 23, 1969, denying appellant's claim for

employment benefits for the period September 14, 1969,
October 18, 1969.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the decision of the Department of Employment Security that appellant was not eligible for benefits during the period in question, with instructions to the Department to pay appellant the usual and regular benefits for said period.

STATEMENT OF MATERIAL FACTS

We do not dispute any of the facts found by the referee. However, the Referee's findings omit certain material facts which we believe are necessary to a proper decision in this case. The omitted facts are uncontradicted and appear in the record through the sworn testimony of witnesses before the Referee.

The critical period for purposes of appellant's claim is restricted to a month-long period from September 14, 1969, to October 18, 1969. However, in order to present a fair picture of appellant's work history and demonstrated eagerness to work, it is necessary to cover a more extended period of time. A documented chronology

appellant's recent employment history follows:

(1) July 6, 1966 to June 9, 1968 -- Appellant was in the U.S. Army, from which he was honorably discharged. (R. 38)

(2) June 30, 1968 to September 15, 1968 -- Appellant was employed by the Union Pacific Railroad as a section hand, at an hourly wage of \$2.80. He quit this job for a better one, which did not immediately materialize. (R. 37)

(3) September 30, 1968 to May 1, 1969 -- Appellant worked for Zellerbach Paper Company at an hourly wage of \$2.72. Appellant came into the Employment Security office on his own initiative, was referred to Zellerbach by Mr. Al Brown (a placement interviewer for the Department), and secured the job. Appellant lost this job because he failed to report for work; this was when his wife's mental problems emerged to the point that they began interfering with his ability to report for work promptly and regularly. (R. 37-39)

(4) Between May 1, 1969 and June 2, 1969 -- Appellant came into the Employment Security office seeking work and was referred by Mr. Al Brown to a possible

b at Williamson Body & Fender Company. (R. 39)

(5) June 2, 1969 to August 4, 1969 -- Appellant
worked for Spudnut Industries. He left this job because
wanted a better one and also because his wife's
mental condition was deteriorating so that it was in-
creasingly difficult for appellant to put in regular
hours at work. (R. 39-40)

(6) August 11, 1969 to August 19, 1969 -- Appellant
worked for Union Carbide Company. He obtained this job
through a referral by Mr. Al Brown, after coming into
the Employment Security office on his own initiative
seeking employment. Appellant was fired because he
missed work on August 14 and August 18, when he was in
Provo at the State Mental Hospital seeing his wife.
(R. 21, 39-40)

(7) September 16-18, 1969 -- Appellant was in-
formed of three job possibilities by Employment Security.
He was busy trying to get his wife released from the
mental hospital in Provo, as well as being responsible
for the care of his infant daughter (who was five months
old at the time of hearing in December), and was unable
to respond to the job calls until September 18. On the

After that date he went into the Employment Security office and saw Mr. Al Brown, who was unable to check out the first two calls (which appellant understood were concerned with a warehouse job and a construction job) but he did refer him to Intermountain Glass. Appellant followed up on that referral, talked with the employer, discovered the job was not a truck-driving job as he had been led to expect, learned that the job paid only \$.60 per hour, and declined the job because of the inadequate pay (more than \$1.00 per hour below what he had earned on several previous jobs and substantially less than other jobs paid currently in the local area). At the hearing before the Referee, appellant and Mr. Brown were informed for the first time that one of the first calls on September 16 or 17, 1969, had apparently involved a job opening at LTV Memcor and that this job had been filled by the time appellant came in to see Mr. Brown on September 18, 1969. (R. 27-43)

(8) September 24, 1969 -- Appellant was informed by Mike Gonzales (head of the Antidiscrimination Office of the Industrial Commission) that he should contact Mr. Matt Brown, in the Kennecott Building, about possible

ployment with Kennecott. Appellant did so and put in job application, but nothing materialized. (R. 28, -34, 43)

(9) September 26, 1969 -- Through Mike Gonzales, appellant obtained an appointment for September 26, 1969, concerning a possible job at the University of Utah. However, a hearing was set for the same date in Provo on the question of his wife's retention or release from the mental hospital, and appellant was compelled to pass the job appointment in order to attend the hearing in Provo. (R. 43)

(10) September 14, 1969 to October 18, 1969 -- Appellant came in to see Mr. Al Brown four or five different times about getting a job. (R. 39)

(11) October 20, 1969 -- Appellant was referred by Mr. Al Brown to Western Electric, where appellant obtained a job which he held at the time of the hearing before the Referee. (R. 26, 39) This was the fifth referral and third job secured by appellant through Mr. Al Brown.

So far as the record reveals, Mr. Al Brown was the only person in the Department of Employment Security

o had any substantial contact with or personal knowledge
out appellant's efforts to obtain employment. This,
material part, is what Mr. Al Brown had to say about
pellant's availability for work:

"Referee You are employed by the Employment
Security Department?

"Mr. Browne Employment Security.

"Referee What Department are you employed in?

"Mr. Browne Placement Interviewer.

"Referee Approximately how long have you
been employed in this position?

"Mr. Browne About 17 months.

"Referee Continue.

"Mr. Young Mr. Browne, would you just briefly
tell us--well, first of all, can
you recall any time, to your own
knowledge, that a telephone call
was made to Mr. Martinez concerning
a job, and Mr. Martinez made no
response to that call?

"Mr. Browne No, I cannot.

"Mr. Young Now would you just tell me what you
can recollect about your contacts
with Mr. Martinez relative to him
obtaining employment?

Mr. Browne Well, all the times that I saw him,
he came in on his own seeking work,
and the first one was Zellerbach
Paper Company. I referred him out
there and he got the job.

"Referee A little bit louder, please.

"Mr. Browne The first job I sent him out on was Zellerbach Paper Company. I referred him out there and he got the job. The second time was with Williamson Body and Fender Company, out on about 18th or 19th West and 8th South.

"Mr. Young Approximately when was that?

"Mr. Browne I can't recall the exact date of it. It was after he lost the job with Zellerbach though.

"Mr. Young All right.

"Mr. Browne And he was working night shift.

"Mr. Young Where was he working night shift?

"Mr. Browne Out to Zellerbach, I believe, because he contacted me in between. He contacted me by phone, and asked me if there was any daytime job that he could get to go along with his night job. Then the other job was Union Carbide. I referred him out there and he got the job. And then during the time--September, I guess it was--he came in four or five different times. I remember him asking me about who made the phone calls and could I check on those job orders, which I was unable to do. And then I mentioned to him about Western Electric, and I feel that he was trying to get employment on his own, as far as I am concerned." (R. 38-39)

At the hearing before the Referee, counsel for

bellant established on the record that the Department's trial of benefits rested only upon the fact that bellant missed out on a job which was filled by the time he responded a day or two after a call from the Department:

"Mr. Young May I just ask a question on the record? Is there any contention that on any specific occasion, I am referring to September 16 and 17, that there was ever any time when a job was actually referred to Mr. Martinez and he didn't accept the job or attempt to find out about it, other than the \$1.60 job we talked about?

"Referee Apparently at the time then contacted him there was an opening with LTV Memcor, and this is one reason they were calling him at that time. And I get the impression by the time he did contact him a day or two later that the opening had been closed. Now I have no further verification except the Form 614, which is used by the Department in referring to this.

"Mr. Young So the only thing we would have then would be an indication that --

"Referee It would not have been given to him --

"Mr. Young The job was not open longer than a couple of days?

"Referee Right. Apparently when he did

contact them at least the job was not available or they would have sent him out on it. Did they talk to you at all about a job with LTV Memcor?

"Mr. Martinez No, they didn't. I just know there was the warehouse job and some other job.

"Referee I am assuming it was closed, but I have no reason to assume otherwise, or they would have referred him on it.

"Mr. Young I think that is all we have today."
(R. 43)

ARGUMENT

POINT I

THE DEPARTMENT ERRED IN DETERMINING THAT APPELLANT WAS NOT "AVAILABLE FOR WORK" WITHIN THE MEANING OF UCA 35-4-4(c).

In Jones v. California Packing Corp., 121 Utah 2, 244 P.2d 640, the court's basic approach to the employment compensation statutes of this state is concisely stated:

"This court has repeatedly held that the Workmen's Compensation Act should be liberally construed to effectuate its purposes, and where there is doubt, it should be resolved in favor of coverage of the employee."

1 Utah at 615.

The purposes of the Act are elucidated in Singer

Wing Machine Co. v. Industrial Commission, 104 Utah
5, 134 P.2d 479 (1943):

"(a) The Unemployment Compensation Law was enacted under and as an exercise of the police power of the state.

"(b) Its purpose is remedial to protect the health, morals, and welfare of the people by providing a cushion against the shocks and rigors of unemployment.

"(c) Being remedial under the police power and not imposing limitations on basic rights, it should be liberally construed."

4 Utah at 189.

The Department has denied benefits to appellant on the ground that he was "not available for work as interpreted by the law from September 14, 1969, to October 18, 1969." (R. 23) By "law," the Department's reference to UCA 35-4-4(c), which provides that an unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the commission that . . . he . . . is available for work." (R . 22)

Ironically, the Department's position purports to be supported by Gocke v. Wiesley, 18 U.2d 245, 420 P.2d (1966), a case in which this court held the Department had erroneously withheld benefits because of the

partment's unreasonably narrow interpretation of the statutory term, "available for work." We are content to submit our case to the court on the actual record hereinabove set forth, applying the language contained in the Referee's decision below, he correctly quoted it from the Gocke case:

"In order to assure that only individuals who are unemployed because of lack of suitable job opportunities receive benefits, this state requires that one must be available for work. Section 35-4-4(c), U.C.A. 1953. The Industrial Commission contends, and we agree, that the eligibility for compensation is not established by showing a passive willingness to gain employment. It seems that the claimant must act in good faith and make an active and reasonable effort to secure employment. . . . It is our belief that the broad purpose of the unemployment statute requires one to make a reasonable attempt to obtain employment. . . ."

U.2d at 249.

As we pointed out hereinabove in our Statement of Material Facts, the only employee in the Department of Employment Security who had any substantial personal contact with appellant was Mr. Al Browne. Over a period of several months, Mr. Browne referred appellant to five job openings, and appellant succeeded in obtaining three of those five jobs. In particular, as

to the particular time period here in question (September 14, 1969, to October 18, 1969), Mr. Browne testified under oath before the Referee, as follows:

" . . . And then during the time--September, I guess it was--he came in four or five different times. I remember him asking me about who made the phone calls and could I check on those job orders, which I was unable to do. And then I mentioned to him about Western Electric, and I feel that he was trying to get employment on his own, as far as I am concerned." (R. 39)

We believe that Mr. Browne's opinion is amply supported by the record herein. We have some difficulty understanding the Department's apparent position that appellant should be penalized because he was beset with personal problems which made it very difficult for him to keep on looking for work which he did, despite his responsibility for the care of an infant daughter and his torment over his wife's prolonged retention in the mental hospital (Provo). As Shakespeare has said, "the quality of mercy is not strained" That, after all, is what this court has been trying to tell the Department in such cases as we have cited hereinabove.

CONCLUSION

The decisions of the Board of Review and of the appeals referee should be reversed, with instructions to pay appellant benefits for the period September 14, 1969, to October 18, 1969.

Respectfully submitted,

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