

1970

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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

MARTIN J. MARTINEZ,

Appellant,

vs.

DEPARTMENT OF EMPLOY-
MENT SECURITY OF THE
STATE OF UTAH,

Respondent.

Case No.
12054

BRIEF OF RESPONDENT

Appeal from a Decision of the Department of Employment
Security, State of Utah, as upheld by the Appeals Referee and
the Board of Review Industrial Commission, State of Utah.

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12054

BRIEF OF RESPONDENT

STATEMENT OF CASE

This is an appeal from a decision of the Department of Employment Security denying appellant unemployment compensation benefits for the period September 14, 1969 to October 18, 1969. The Board of Review on March 18, 1970 affirmed the decision of the appeals referee dated December 23, 1969 denying appellant's

claim for unemployment compensation benefits for the period of September 14, 1969 to October 18, 1969.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of a 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 FACTS

There appears to be no dispute as to the facts found by the appeals referee. The appellant, a resident of Salt Lake City, worked for Union Carbide from August 11, 1969 to August 19, 1969, when he was discharged for failure to report for work on August 14, and again on August 18. He was at the State Mental Hospital in Provo on those days visiting his wife who was a patient there. (R-0021, R-0039-40).

He was unemployed from August 19, 1969 until October 20, 1969, when he went to work for Western Electric Company as a result of a referral from the Employment Service and he was working at the time of the hearing. (R-0026).

He was disqualified by reason of the discharge from Union Carbide for the period ending September 13, 1969. (R-0036). He filed claims for benefits for the

period commencing September 14 and ending October 18, 1969. (R-0025). It is this period of time which is involved in this appeal. On September 24, 1969, appellant filed a work application at Kennecott Copper (R-0027).

The Employment Service telephoned appellant on September 17 and again on September 18 asking that he come into the employment office to discuss two job openings, and the appellant informed the representative who telephoned that he was "unable to come in." (R-0032). He appeared in the employment office on September 25, 1969, and explained that he did not come in in response to the telephone calls because he had "been going down to see my wife" and had been talking with doctors to try to get her released. He also stated that a hearing had been set regarding her release to be held September 26, 1969. (R-0032).

One Mike Gonzales of the State Anti-Discrimination Department informed appellant that he had made an appointment for appellant to contact the University of Utah about a job. This appointment was for September 26, 1969. The appellant did not keep the appointment nor did he attempt to change the date of the appointment. (R-0034). Appellant testified "I don't know, I just didn't call back. Like I told you, I had a lot on my mind. There was really a lot of things I had to do." (R-0034).

In response to another telephone call from the Employment Service the appellant called the employer whose name was given him on the telephone but did not

file a work application or attempt to see the employer. (R-0029-30).

Until appellant's wife was released from the Provo Hospital on or about October 13, 1969 (R-0037), the appellant was engaged primarily in taking care of his baby, visiting his wife at the hospital, and working to get her released. (R-0029-30). On October 20, 1969, one week after his wife's release from the hospital, appellant accepted a referral from the Employment Service to the Western Electric Company and was hired by that company, going to work on October 20, 1969. (R-0026).

ARGUMENT

POINT I

The Department and the Board of Review did not err in determining that the appellant was not "available for work" within the meaning of Section 35-4-4c UCA. Section 35-4-4 provides:

"An unemployed individual shall be eligible to receive benefits with respect to any week only if it has been found by the Commission that:

"(c) He is able to work and is available for work."

The appellant because of his almost total occupation with his family problems of child care and in particular his wife's hospitalization acted in a manner which caused his separation from his job with Union Carbide and

caused him to fail to report to the Employment Service for work referrals and to keep a firm appointment for a job interview. The facts are clear that until his wife was released from the Hospital he was not available for work when work was available for him. As soon as appellant's wife was released, he accepted a job referral from the Employment Service and was hired by Western Electric.

Unemployment benefits are provided under a program insuring against wage loss the individual who is willing, able, and ready to accept suitable work or employment which he does not have good cause to refuse. He must be exposed unequivocally to the labor market.

In the case of *Leclerc v. Administrator, Unemployment Compensation Act* 78 A 2d 550 137 Conn. 438 the Court said:

"The Superior Court has repeatedly ruled that a claimant who limits his availability for work because of personal reasons unrelated to the employment is not entitled to compensation (citing cases). This constitutes a reasonable and sound interpretation of the act and is sustained by decisions in other jurisdictions: *Ford Motor Co. v. Unemployment Compensation Commission*, 316 Mich. 468, 474, 25 N. W. 2d 586; *Mills V. South Carolina Unemployment Compensation Commission* 204 S. C. 37, 28 S. E. 2d 535; *Kut vs. Albers Super Markets Inc.* 146 Ohio State 522, 524, 66 N. E. 2d 643, *Kut vs. Bureau of Unemployment Compensation* 329 U. S. 669, 67 S Ct. 86, 91 L. Ed, 590."

The above case and cases cited therein deal with claimant restrictions regarding hours of work and shift work which were claimed by claimants not to make them unavailable. In the instant case the appellant did not specifically state his personal restrictions—he just did not appear at interviews when work was apparently in the immediate offing.

In this case the appellant because of the personal reasons set forth above kept himself from being employed until his family situation was cleared.

In *Gocke vs. Wiesley* 18 U. 2d. 245, 420 P 2d 44 (1966) this Court said:

“ . . . 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.”

What is more reasonable to expect of appellant than that he make himself available for referral to specific jobs or that he either keep a job interview appointment or at least try to change the date of the appointment.

On the calls from the Employment Service he said he wouldn't appear and he did not appear until about one week later. On the specific job appointment at the University he did not intend to appear then or later.

The only apparent reason for his unemployment during the weeks in question was his total preoccupation

with his personal problems which were wholly unrelated to work of any kind.

Is the Commission to consider that one phone call and one job application (Kennecott Copper—where no prospect of immediate employment was apparent) make unnecessary any good faith attempt to follow through on work which appeared to be immediately available? Is it reasonable to conclude that appellant was seriously in the labor market during the weeks in question when he refused to expose himself to available jobs.

Appellant's reasons were impelling to him and of great importance but they were personal reasons. When they kept him from being employed he was not eligible to receive benefits.

Counsel for appellant contends that we must have "mercy" and judge our claimants accordingly, and "that after all, is what this court has been trying to tell the Department . . ."

The Department operates an insurance program, governed by statute, rules, and regulations. Its representatives are sympathetic to the personal problems of claimants but that sympathy is not a sound basis for legal decisions. In many cases it would lead to illegal expenditures of taxpayers' funds.

The facts are clear—the appellant not only became unemployed because of what he rightfully considered impelling problems; he remained unemployed for the

same reasons, i.e. until his wife was released. The Board of Review could not conclude otherwise.

CONCLUSION

The decision of the Board of Review and the Appeals Referee should be affirmed and benefits denied accordingly.

Respectfully submitted,

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