

1977

Richard L. Scoville v. Board of Review of the Industrial Commission of Utah : Brief of Plaintiff

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD L. SCOVILLE,

Plaintiff,

v.

THE BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF UTAH,

Defendant.

CASE NO. 14718

BRIEF OF PLAINTIFF

STATEMENT OF KIND OF CASE

This is an appeal from an action by the Industrial Commission of the State of Utah to enforce refund of unemployment benefits received by the plaintiff, Richard L. Scoville, during an alleged disqualification period.

DISPOSITION IN LOWER COURT

On March 8, 1976, a Hearings Representative of the Department of Employment Security issued a decision to the effect that Richard L. Scoville had violated Section 35--4-5 (e) of the Utah Employment Act by filing a claim for unemployment benefits to which he was not entitled,

assessing an overpayment of \$1,292.00 during a disqualification period. This decision was appealed to the Appeals Referee of the Department of Employment Security, where the findings of the Hearings Representative was upheld. Appeal was taken to the Board of Review, which on June 30, 1976, upheld the decision of the Appeals Referee denying benefits for the 52 week period commencing with the calendar week ended May 10, 1975, and assessing the plaintiff with the liability to repay \$1,292.00 received by him during such disqualification upon the grounds that the plaintiff knowingly withheld material facts regarding his employment for the week ended May 10, 1975, and received benefits to which he was not entitled, in violation of Section 35-4-5 (e) Utah Code Annotated (1953, as amended).

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the decision of the Board of Review of the Industrial Commission of the State of Utah.

STATEMENT OF FACTS

The facts in this case have been basically set forth in the Statement of Kind of Case and Disposition in Lower Court with the exception of the fact that the plaintiff was working at various intervals of time during 1975 for Larsen Concrete and Asphalt Company as set forth in the record which has been certified on appeal.

ARGUMENT

THE DECISION OF THE BOARD OF REVIEW IS
ARBITRARY AND CAPRICIOUS AND IS NOT
SUPPORTED BY COMPETENT EVIDENCE

Section 35-4-5 (e) Utah Code Annotated (1953, as amended) provides, in part, that the plaintiff Richard L. Scoville must be found to have "...willfully made a false statement or representation or knowingly failed to report a material fact..." to invoke the disqualification period applicable in these cases. The evidence totally fails to meet such a burden of proof to deny the credibility of plaintiff's testimony at 0019 through 0024 of the record on appeal concerning an honest mistake regarding his employment during the week of ended May 10, 1975. That testimony shows the plaintiff himself uncertain that he was actually employed during the week in question, that the employer maintained no timecards for the plaintiff and that the plaintiff was not paid on a regular basis. Further, the plaintiff testified that he had not received a paycheck for work for the week in question as of the date he filed for benefits and was not even sure that he was under an obligation to report those unpaid hours. The decision of the Board of Review relies on a report from Larsen Concrete and Asphalt Company regarding plaintiff's work hours. The Company's management was not present at the Board's consideration of this case to explain the records it kept or the Company's manner of wage payment to the plaintiff. Thus, the plaintiff's confusion

regarding his work and payment schedule was not resolved or explained away in any hearings before the Industrial Commission nor in the record submitted to the Board of Review on appeal.

CONCLUSION

The decision of the Board of Review must be reversed because the evidence it considered fails in any way to set forth facts which prove that the plaintiff willfully or knowingly committed a fraud upon the Department of Employment Security of the State of Utah. The plaintiff committed a simple and honest mistake through little fault of his own.

Respectfully submitted,

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