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## Richard L. Scoville v. Board of Review of the Industrial Commission of Utah : Defendant's Brief

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

RICHARD L. SCOVILLE,

Plaintiff-Appellant,

vs.

Case No. 14718

THE BOARD OF REVIEW OF THE  
INDUSTRIAL COMMISSION OF UTAH,

Defendant-Respondent.

## DEFENDANT'S BRIEF

### NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, seeking judicial review of a decision of the Board of Review of the Industrial Commission of Utah, which affirmed the decision of an Appeal Referee denying unemployment benefits to Plaintiff for 52 weeks and assessing an overpayment for benefits received during the period of disqualification, on the grounds that when filing a claim for unemployment benefits for the week ended May 10, 1975, the Plaintiff knowingly failed to report material facts about work and earnings in order to receive unemployment benefits to which he was not entitled, in violation of Section 35-4-5(e), Utah Code Annotated 1953, as amended.

### DISPOSITION BY THE BOARD OF REVIEW

~~Plaintiff was disqualified from receiving unemployment benefits effective the week~~

ended May 10, 1975, for a period of 52 weeks, and was assessed an overpayment of \$1,292.00 for benefits received during the disqualification period by a determination of a Department Hearing Representative dated March 8, 1976.

By decision dated April 29, 1976, an Appeal Referee affirmed the determination of the Hearings Representative. The decision of the Appeal Referee was affirmed by the Board of Review in a decision dated June 30, 1976, and amended that same date, in Case Number 76-A-1002, 76-BR-89.

### RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the decisions of the Board of Review and the Commission. Defendant seeks affirmance of such decisions.

### STATEMENT OF FACTS

Defendant substantially agrees with the Statement of Facts set forth in Plaintiff's Brief, except in the following particulars: The Plaintiff filed claims for benefits for the weeks ended December 28, 1974, and January 4, 1975, reporting thereon work and earnings for each of those weeks. (R.0013, 0015, 0016, 0022, 0035.) The Plaintiff began work for Larsen Concrete and Asphalt Company on May 6, 1975, and earned \$80.00 during the calendar week ended May 10, 1975. (R.0015, 0026, 0027, 0030, 0038.) He certified on his claim for the week ended May 10, 1975, that he had no work or earnings for that week (R.0015, 0020), and on his claim for the week ended May 17, 1975, that he began work on May 12, 1975. (R.0016, 0020, 0021).

### ARGUMENT

THE FINDINGS OF THE BOARD OF REVIEW AND THE APPEAL REFEREE THAT THE PLAINTIFF DID KNOWINGLY WITHHOLD THE MATERIAL FACTS OF WORK AND EARNINGS TO OBTAIN UNEMPLOYMENT BENEFITS TO WHICH HE WAS NOT ENTITLED ARE NOT ARBITRARY OR CAPRICIOUS AND ARE SUPPORTED BY EVIDENCE.

The provisions of the Utah Employment Security Act applicable herein are 35-4-5(e) and 35-4-6(d).

5. An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(e) For the week with respect to which he had willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this act, and for the 51-week period immediately following and until he has repaid to the fund all monies he received by reason of his fraud and which he received during such following 51-week disqualification period, provided that determinations under this subsection shall be made only upon a sworn written admission, or after due notice and recorded hearing; provided that when a claimant waives the recorded hearing a determination shall be made based upon all of the facts which the commission, exercising due diligence, has been able to obtain; and provided further that such determination shall be appealable in the manner provided by this act for appeals from other benefit determinations.

Section 35-4-6(d) provides:

Any person who, by reason of his fraud, has received any sum as benefits under this act to which he was not entitled shall be liable to repay such sum to the commission for the fund. If any person, by reason of his own fault, has received any sum as benefits under this act to which under a redetermination or decision pursuant to this section he has been found not entitled, he shall be liable to repay such sum, and/or shall, in the discretion of the commission, be liable to have such sum deducted from any future benefits payable to him. In any case which under this subsection a claimant is liable to repay to the commission any sum for the fund, such sum shall be collectible in the same manner as provided for contributions due under this act.

The standard of review in unemployment insurance cases is well established in Utah.

Section 35-4-10(i), Utah Code Annotated 1953, as amended, provides in part:

In any judicial proceeding under this section the findings of the commission and the board of review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed. *Martinez v. Board of Review*, 25 Ut. 2d 131, 477 P. 2d 587 (1970). A reversal of an order of the Department denying compensation can only be justified if there is no substantial evidence to sustain the determination and the facts giving rise to a right to compensation are so persuasive that the Department's denial is clearly capricious, arbitrary, and unreasonable. *Kennecott Copper Corporation Employees v. Department of Employment Security*, 13 Ut. 2d 262, 372 P. 2d 987 (1962); *Gocke v. Wiesley*, 18 Ut. 2d 245, 420 P. 2d 44, 45 (1966). In *Members of Iron Workers Union of Provo v. Industrial Commission*, 104 Ut. 242, 248; 139 P. 2d 208, 211, said: *Library Services and Technology Act, administered by the Utah State Library.*

If there is substantial competent evidence to sustain the findings and decision of the Industrial Commission, this Court may not set aside the decision even though on a review of the record we might well have reached a different result.

There appears to be no dispute that Plaintiff did not report work and earnings for the week ended May 10, 1975, and that he reported on his claim for the next week that he had begun work on May 12, 1975. Plaintiff's principal contentions on appeal are (1) the evidence that Plaintiff actually worked during the week ended May 10, 1975, is inconclusive; (2) that Plaintiff was not sure he was under an obligation to report unpaid hours; and (3) that Plaintiff made an honest mistake in failing to report his work and earnings.

The evidence to support the finding of the Appeal Referee that Plaintiff worked during the week ended May 10, 1975, is clear and ample. The employer, Larsen Concrete and Asphalt Company, responded to an inquiry from the Department of Employment Security dated December 8, 1975, reporting that Plaintiff had worked two hours on May 6, eight and one-half hours on May 8, and nine and one-half hours on May 9, and earned a total of \$80.00 for those hours. (R.0038) On January 5, 1976, Plaintiff signed a statement that he disagreed with the employer's report and would check with the employer to see what his time card actually said. (R.0037) On January 12, 1976, Plaintiff reported that he had still not contacted his employer. (R.0037)

At his hearing before the Appeal Referee the Plaintiff again disagreed with the employer's report. However, he testified that he had no reason to believe the report was not correct.

Referee: Since this matter came to your attention, have you checked with the employer to see when you started work?

Claimant: No.

Referee: Do you have any reason to believe that report is incorrect?

Claimant: No. (R.0019)

After the hearing the Referee had the Department recontact the employer, who then furnished the Referee with copies of Plaintiff's W-4 form (R.0029), the employer's

individual payroll record for the Plaintiff (R.0030), a check stub for the period ended May

8, 1975, indicating the employee's name "Richard," (R.0026), and a canceled check dated May 9, 1975, which had been made out to and apparently endorsed by Plaintiff. (R.0027) It is difficult to perceive of what additional burden Plaintiff would place on the Commission to establish the fact of his employment during the week in question. Also, it should be noted that despite Plaintiff's objections to the employer's report, he did not at any time between January 5, 1976, and April 15, 1976, the date of the Appeal hearing, contact the employer to personally inspect the payroll records, nor did he offer to the Board of Review any evidence that the records were in error.

The weekly claim card which all unemployment claimants are required to complete and submit contains spaces for a claimant to report the hours he worked each day, his gross earnings, the name of his employer, and the date he began steady work. Plaintiff cannot escape his responsibility to properly report such information by simply saying that his confusion regarding his work and payment schedule was not explained away in the hearings. The pertinent portions of the Plaintiff's testimony concerning this issue are contained in the following excerpts from the transcript:

Referee: When you filed this claim for the week of May 10, 1975, were you aware that work and earnings should be reported on the weekly claims?

Claimant: Yes.

Referee: Were you aware they should be reported even though you hadn't yet been paid?

Claimant: I wasn't sure on that 'cause I hadn't received no checks for nothing.

Referee: Can you tell me why you failed to report your work and earnings there? The record would indicate that you apparently earned \$80.00 that week and yet no work or earnings had been reported.

Claimant: I guess I just got the days mixed up—that's all I can figure—I got the dates mixed up between my boss and me. (R.0020)

The weight to be given particular evidence is a matter within the province of the trier of the facts, taking into consideration all circumstances and surroundings that might in any way affect its credibility.

The weight to be given particular evidence is a matter peculiarly within the province of the trier of the facts, unhampered by mechanical rules governing the weight or effect of evidence. 2 Am. Jur. 2d, Administrative Law, Section 394.

The Employment Security Act, Section 4, states 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: . . ." thereby making the Commission the exclusive trier of the facts regarding all claims for unemployment compensation benefits. In the case of *Walton v. Wilhelm*, 120 Ind. App., 91 N.E. 2d 373 (1950), the court said:

The duty to determine the facts has been delegated to the Board. A realistic interpretation of the facts and circumstances in evidence is absolutely essential to the successful operation of the plan. Of course, the Board may not disregard or refuse to consider uncontradicted testimony, but it is not always necessary, in order for a conflict to exist, that testimony be directly contradicted or denied by other testimony. In its search for the truth the Board has the right to consider the interest of the witness; the probability or improbability of his assertions in the light of proved or admitted facts; the general situation as shown by all of the surrounding circumstances; the conditions or compulsions under which the witness acted and under which he testified; his prejudices, if any, and his desires; his apparent forthrightness or lack thereof; and many other factors. *Haynes v. Brown*, Ind. App. 1949, 88 N.E. 2d 795. . . .

In view of the employer's check dated May 9, 1975 (R.0027), the Referee found Plaintiff's testimony unconvincing and not credible.

Plaintiff's assertion that he had made a simple and honest mistake is inconsistent with the evidence which was before the Referee and the Board of Review. Plaintiff's knowledge of the requirement to report all work and earnings is evidenced by both his testimony and his prior claims on which he correctly reported such information. The claimant's testimony that he was unsure how to report unpaid hours is curious in light of the employer's check issued on May 9, 1975, just two days before the claimant completed and signed the claim form. (R.0020) Finally, the claimant reported on his claim for the week ended May 17, 1975, that he started work on May 12, 1975. (R.0020, 0021.) The Referee and Board of Review could reasonably conclude from such evidence that the claimant intentionally and knowingly withheld the information of his work and earnings for the purpose of obtaining benefits to which he was not entitled, in violation of Section 35-4-5(e) of the Employment Security Act.

## CONCLUSION

Unemployment benefits are paid solely on the basis of information supplied each week

by a claimant. Therefore, one claiming benefits under the unemployment insurance program has a duty to properly and accurately complete each weekly claim form, showing thereon all information material to that week's claim. To aid the claimant in completing his claim, the form sets forth the major areas of materiality, requiring the claimant to complete work and earnings information and to report the date he started back to steady work.

In the instant case the Plaintiff left blank all portions of the claim dealing with work and earnings. Relying on that claim, the Department of Employment Security paid \$76.00 to the Plaintiff for a week in which the Plaintiff actually earned \$80.00. In addition, the Plaintiff certified on his claim for the following week that he did not start work until May 12, 1975.

The evidence in this case is substantial and the decisions of the Appeal Referee and Board of Review should be affirmed.

**RESPECTFULLY SUBMITTED,**

**ROBERT B. HANSEN,**  
Attorney General

**K. ALLAN ZABEL**  
Special Assistant  
Attorney General

**Attorneys for Respondent**