

1977

Arnold E. Bullough v. Department of Employment Security And Board of Review Ot The Industrial Commission Ot The State of Utah : Plaintiff's Brief Or Appeal

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

STATE OF UTAH

ARNOLD E. BULLOUGH,)
Plaintiff,)

-vs-

Case No. 15131

Department of Employment)
Security and Board of Review)
of the Industrial Commission)
of The State of Utah,)
Defendant.)

* * * * *

PLAINTIFF'S BRIEF ON APPEAL

* * * * *

APPEAL FROM A DECISION OF THE
BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION
OF THE STATE OF UTAH

* * * * *

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35-4-5 (e), Utah Code Annotated, 1953, as amended -----	1
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IN THE SUPREME COURT OF UTAH
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ARNOLD E. BULLOUGH,)

Plaintiff,)

-vs-

) Case No. 15131

DEPARTMENT OF EMPLOYMENT)
SECURITY AND BOARD OF REVIEW)
OF THE INDUSTRIAL COMMISSION)
OF THE STATE OF UTAH,)

Defendant.)

* * * * *

PLAINTIFF'S BRIEF ON APPEAL

* * * * *

STATEMENT OF NATURE OF CASE

This appeal concerns the legality of a decision of the Board of Review of the Industrial Commission of The State of Utah wherein it was determined that the plaintiff had filed a false claim and received unemployment compensation benefits to which he was not entitled, contrary to the provisions of 35-4-5 (e), Utah Code Annotated, 1953, as amended.

DISPOSITION BY BOARD OF REVIEW

The Board of Review upheld the decision of the Appeals Referee of the Industrial Commission of the State of Utah finding that the plaintiff knowingly withheld material facts of his employment and earnings for the week ending May 22, 1976, and as a result received

unemployment benefits to which he was not entitled. Further unemployment benefits were denied plaintiff for a period of fifty-two (52) weeks commencing with the calendar week ended May 22, 1976, and a liability of the plaintiff to repay the sum of \$1,212.00, paid to him during the period when he was disqualified from receiving unemployment compensation, was assessed.

RELIEF SOUGHT ON APPEAL

The plaintiff seeks reversal of the Decision of the Board of Review.

STATEMENT OF FACTS

Plaintiff became unemployed and filed a claim for unemployment compensation benefits on April 26, 1976 (R-11). Claim forms for unemployment compensation benefits were mailed to the plaintiff each week and received by him on either Wednesday or Thursday prior to the end of the week (Saturday) (R-16).

The claim form used for making an unemployment compensation claim is a manila card, printed on back and front (R-31). Plaintiff was entitled to weekly unemployment compensation benefits in the sum of \$101.00 for weeks during which he was unemployed.

Plaintiff's practice was to partially complete the claim form on the Wednesday or Thursday when he received it in the mail and finish filling out the form the following Sunday or Monday if he hadn't gone back to work during the preceeding week (R 16). Plaintiff's wife would then place the card in the mail on Sunday or Monday (R-20, 25).

On May 18, 19, 20 and 21, 1976, plaintiff worked for Mountain States Insulation and Supply Company, earning a total of \$319.68 for such work (R-30). The claim form for the week ending May 22, 1976, was signed by plaintiff and he received the sum of \$101.00 as unemployment compensation for that week (R-22, 30).

The Hearings Representative of the Department of Employment Security of the Industrial Commission of Utah found that the plaintiff knowingly withheld material information concerning his employment and earnings to receive unemployment compensation benefits to which he was not entitled (R-26, 27).

The plaintiff filed his appeal of the decision of the Hearings Representative and submitted additional facts to be considered (R-25). An appeal hearing of the decision of the Hearings Representative was then held before the Appeals Referee of the Department of Employment Security of the Industrial Commission of Utah who found that the plaintiff knowingly withheld the material facts of his work and earnings to receive unemployment compensation benefits to which he was not entitled (R-11, 12).

The plaintiff then appealed the decision of the Appeals Referee to the Board of Review of the Industrial Commission of Utah whose decision was that the plaintiff knowingly withheld the material facts of his employment and earnings to receive unemployment compensation benefits to which he was not entitled.

ARGUMENT

Point I

THE EVIDENCE DOES NOT SUSTAIN THE FINDINGS THAT THE PLAINTIFF KNOWINGLY WITHHELD MATERIAL FACTS CONCERNING HIS EMPLOYMENT AND EARNINGS TO RECEIVE UNEMPLOYMENT BENEFITS TO WHICH HE WAS NOT ENTITLED.

The plaintiff's difficulty in this case would seem to stem from a bureaucratic claim form which makes about as much sense as socks on a rooster and receives its interpretation from the same bureaucracy which spawned it.

Both the Hearings Representative and the Appeals Referee who heard the plaintiff's testimony would seem to charge the plaintiff with a knowledge of the Unemployment Insurance Handbook (R-26, 11), which was not a part of the evidence in the decision of either. Illustrations for filling out the claim form on pages 6, 7, 8 and 10 of the Unemployment Insurance Handbook, would lead one to believe that Paragraph 2 (a), (b) and (c) of the claim form should be filled in -- or at least the notation "none" (emphasis added) should appear in Paragraph 2 (c). But the plaintiff left the whole of Paragraph 2 of the claim form blank. Plaintiff's leaving Paragraph 2 of the claim form completely blank coupled with an obvious check mark directly below the yes boxes for Paragraphs 6, 7, 8, 9, 10 and 11, but in Paragraph 12, where no yes box appears, on the reverse side of the claim form, should have been obvious signs that plaintiff's claim form was incomplete.

Plaintiff testified that he did not knowingly fail to report his work or earnings to obtain an extra unemployment check (R-19). The evidence would seem to support this in that the plaintiff's practice was to partially fill out the claim card on the day it was received in the mail and his wife would mail it some four or five days later.

Point II

THE FILING OF THE CLAIM FORM BY THE PLAINTIFF WAS INADVERTANT
AND UNINTENTIONAL.

* * * * *

The plaintiff has filed some 100 to 200 claims for unemployment compensation (R-18). On claim forms other than the one in question for the week ending May 22, 1976, employment and earnings had been reported by the plaintiff (R-18).

Familiarity with Paragraph 2 of the claim card was readily acknowledged by the plaintiff who claimed that the claim form was placed in the mail in its incompleated form by his wife. (R-16, 17).

The evidence supports the claim of the plaintiff that he was waiting to get the information to complete the claim card, but that it was mailed by his wife in its incomplete form and unbeknown to him.

CONCLUSION

It is hard to see how the claim form for the week ending July 10, 1976, in which the plaintiff reported work and hours but not the amount of earnings, was paid due to what was termed "inadvertantly" (emphasis added) (R-18) by the Department of Employment Security, when an omission by the plaintiff on the claim form for the week ending May 22, 1976, explained and supported by the evidence as an inadvertance on his part, can be interpreted to have been "knowingly" (emphasis added) done by the plaintiff.

The evidence does not sustain the decision of the Board of Review that the plaintiff knowingly withheld information of material facts to receive unemployment benefits to which he was not entitled.

