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

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ARNOLD E. BULLOUGH,

Plaintiff-Appellant,

vs.

Case No. 15131

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

Defendant-Respondent.

DEFENDANT'S BRIEF

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

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IN THE SUPREME COURT OF THE STATE OF UTAH

ARNOLD E. BULLOUGH,

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DEPARTMENT OF EMPLOYMENT SECURITY
AND BOARD OF REVIEW OF THE
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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 the 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 22, 1976, the Plaintiff knowingly failed to report material facts about work and earnings in order to receive unemployment benefits, 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 22, 1976, for a period of 52 weeks, and was assessed an overpayment of

\$1,111.00 for benefits received during the disqualification period by a determination of a Department Hearing Representative dated December 3, 1976, and amended December 13, 1976, to correct the overpayment to \$1,212.00.

By decision dated January 6, 1977, and Appeal Referee affirmed the determination of the Hearing Representative. The decision of the Appeal Referee was affirmed by the Board of Review in a decision dated March 23, 1977, in Case Number 76-A-4435, 77-BR-09.

RELIEF SOUGHT ON REVIEW

Plaintiff seeks reversal of the decision of the Board of Review and the Commission. Defendant seeks affirmation 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: When the Plaintiff filed his claim for unemployment compensation on April 26, 1976, he received a copy of the "Unemployment Insurance Handbook." (R.0011, 0015) The Plaintiff has previously filed for unemployment benefits numerous times (R.0018), and had reported earnings in excess of his weekly benefit amount on at least one prior occasion. (R.0018)

Thus, the Plaintiff was fully familiar with the workings of the unemployment insurance program at the time of filing his claim for the week ended May 22, 1976. (R.0012, 0019) When he received the benefit warrant for the week ended May 22, 1976, the Plaintiff made no effort to correct his claim for that week or to return the money. (R.0012, 0016)

ARGUMENT

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

The provisions of the Utah Employment Security Act applicable herein are:

Utah Code Annotated (1953), 35-4-5(e)

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.

Utah Code Annotated (1953), 35-4-6(d)

6. (d) Any person who, by reason of 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

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated 1953, 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. *Members of Iron Workers Union of Provo v. Industrial Commission*, 104 U. 242, 139 P. 2d 208 (1943); *Kennecott Copper Employees v. Department of Employment Security*, 13 U. 2d 262, 373 P. 2d 987 (1962); *Gocke v. Wiesley*, 18 Ut. 2d 245, 420 P. 2d 44 (1966); *Martinez v. Board of Review*, 25 U. 2d 131, 477 P. 2d 587 (1970). The Court has adhered to this same standard of review in cases involving violation of Section 35-4-5(e) of the Employment Security Act. *Decker v. Industrial Commission of Utah, Department of Employment Security*, 533, P.2d 898 (1975); *Whitcome v. Department of Employment Security, Industrial Commission of Utah*, 564 P. 2d 1116 (1977).

The Plaintiff concedes that he in fact did work during the week ended May 22, 1976, and earned \$319.68. He contends on appeal, however, that: (1) the weekly claim form is subject to interpretation; (2) he had no knowledge of the "Unemployment Insurance

Handbook” and the “Handbook” is confusing with respect to the reporting of work and earnings; and (3) he failed to complete the claim form before his wife mailed it back to the Department.

The Plaintiff describes the weekly claim form as making “about as much sense as socks on a rooster.” Although such piquant phraseology is amusing, there appears to be little relationship between the claim form and a rooster, except perhaps the hen scratching which claimants occasionally place on the claim. Such is the instant case. The Plaintiff stresses the fact that he placed a check mark on the reverse of the claim form, at Item 12. (R.0031) That, coupled with the fact Plaintiff left Item 2 blank, is apparently supposed to place Department employees on notice that Plaintiff worked during the week. The Plaintiff knew how to complete the claim form properly, as demonstrated by his testimony at several points in the appeal hearing:

Referee: . . . When you filed that claim on April 26 [the initial claim], did you receive an Unemployment Handbook similar to this one?

Mr. Bullough: Yes.

Referee: Did you read that?

Mr. Bullough: I just glanced through it. I read it before and thought it was basically the same thing. (R.0015)

Mr. Blackham: Could you tell us what your practice was in your filling out this card. First of all, did you read through these cards when filling them out.

Mr. Bullough: Enough to get the general idea. I’ve filled out quite a few of them and I read enough to get a general idea to be sure I’m answering the questions correctly. (R.0017)

The Referee also observed that the claimant did report excess earnings on one occasion in 1975. (R.0018)

The Plaintiff’s testimony to the effect his wife mailed in the claim form before he had opportunity to properly complete it was not accepted by the Referee as being convincing. The Plaintiff is experienced in the unemployment insurance program, as already detailed *supra*. The claim form is signed by the Plaintiff and carries the date of May 23, 1976, the

Sunday following the end of the week, and just two days after the Plaintiff had worked. (R.0031) Although the Plaintiff testified that he did not report the "error" when he received his benefit check because he "didn't realize it was for that particular week" (R.0016), the Plaintiff went on to state that he had been having difficulty receiving some of his benefit checks. The Referee found, however, that the Plaintiff had been receiving his checks on a regular basis. This finding is supported by the claimant record transcript (R.0022) which shows the following:

<u>Warrant Number</u>	<u>Date Claim Processed and Benefit Warrant Issued by Computer</u>	<u>Week Ending Date</u>	<u>Benefit Amount Paid</u>
000000	5/5/76	4/24	WW*
384901	5/5/76	5/1	\$101
394677	5/11/76	5/8	101
413267	5/19/76	5/15	101
429396	5/26/76	5/22	101

* WW = Waiting Week

The claimant record transcript does show some difficulty in the payment of benefits for the weeks ended August 21, August 28, and September 4, but those difficulties occurred three months after the week in question. Furthermore, the Plaintiff admitted in his testimony, and it was so found by the Referee (R.0012), that he received his checks and cards on Wednesday or Thursday each week:

Mr. Bullough: What I normally do is when I receive the check and the card, on either Wednesday or Thursday, . . . (R. 0016)

It is the practice of the Department to send the benefit check for the prior week with the claim for the current week. Thus, the Referee properly found that the Plaintiff received the benefit check for the week ended May 22, 1976, during the very next week, and in the normal sequence of events.

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 \$101.00 to the Plaintiff for a week in which the Plaintiff actually earned \$319.68. When the Plaintiff received the benefit check in the usual course, he took no action to correct the overpayment.

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

RESPECTFULLY SUBMITTED,

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