

2008

Michael Clayton v. Department of Workforce Appeals Board of the Utah Department of Workforce Services : Brief of Appellant

Utah Court of Appeals

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Respondent, Suzan Pixton #2608 Department of Workforce Services Appeals Office P.O. Box 45244 Salt Lake City, Utah 84145

Petitioner, Michael Clayton Martin 417 M Street Salt Lake City, Utah 84103

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Michael Clayton
Petitioner,

v.

Dept. of Workforce Services
Respondent

Appellant's Brief

In the Court of Appeals
State of Utah

Petition for review

Case # 20080052CA

Respondent,

Suzan Pixton #2608
Department of Workforce Services
Appeals Office
P.O. Box 45244
Salt Lake City, Utah 84145

Petitioner,

Michael Clayton Martin
417 M Street
Salt Lake City, Utah 84103

Michael Clayton
Petitioner,

V.

Dept. of Workforce Services
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Appellant's Brief

In the Court of Appeals
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Department of Workforce Services
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Petitioner,

Michael Clayton Martin
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Table of Authorities

Suffer or Permit to Work

The FLSA defines the term “employ” to include the words “suffer or permit to work”. Suffer or permit to work means that if an employer requires or allows employees to work, the time spent is generally hours worked.

Thus, time spent doing work not requested by the employer, but still allowed, is generally hours worked, since the employer knows or has reason to believe that the employees are continuing to work and the employer is benefiting from the work being done. This time is commonly referred to as “working off the clock”

Statement by the U.S Department of Labor, 7/10/2007

Waiting for Work

Time which an employee is required to be at work or allowed to work for his or her employer is hours worked. A person hired to do nothing or to do nothing but wait for something to do or something to happen is still working. The Supreme Court has stated that employees subject to the FLSA must be paid for all the time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer of his business”

Statement by the U.S Department of Labor, 7/10/2007

Place of Work

“Hours worked include all the time during which an employee is required or allowed to perform work for an employer, regardless of where the work is done, whether on the employer’s premises, at a designated work place, at home, or at some other location.”

Statement by the U.S Department of Labor, 7/10/2007

Rework

“When an employee must correct mistakes in his or her work, the time must be treated as hours worked. The correction of errors, or “rework”, is hours worked, even when the employee voluntarily does the rework.”

Statement by the U.S Department of Labor, 7/10/2007

At-will Employment

At-will employment exists as a perpetual or continuous relationship that ends when either the employer or the employee severs upon termination the ongoing relationship for cause or without cause at any time.

United States Constitution, Determinative Law

Article VI

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, *shall be the supreme law of the land; and the judges in every state shall be bound thereby*, anything in the Constitution or laws of any State to the contrary notwithstanding.

United States Constitution, Determinative Law

Amendment XIII

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

United States Constitution, Determinative Law

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

Utah Constitution Article XVI, Section 6, states that eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, County or Municipal governments;...

Utah code 30-2-10, provides homestead rights and the custody of children to be directed by the court.

Utah Constitution Article XVI, Section 1, protects the rights of the labor, stating that the rights of labor shall have just protection through laws “*calculated*” to promote the industrial welfare of the State.

Article XVI, Section 8, Utah Constitution Article XVI, Section 8, requiring minimum wages for women and minors

Utah code 30-2-4, protects a wife's right to wages and actions for personal injury.

Utah Constitution Article XVI, Section 4, prohibits the exchange of blacklists by ...persons and associations.

Utah Constitution Article I, Section 11; provides for open access to courts for personal injury or loss of property or reputation.

Utah Constitution Article XVI, Section 8... laws to be construed for the comfort, safety, and general welfare of any or all employees.

Utah Code 35A-3-610 provides for legal representation at hearings in response to issues on appeal.

Definition of Concurrent Employment

Concurrent employment occurs when more than one employer have hiring dates that overlap with other employer due to no legal separation of the employment relationship. Each employer owes the same person for work performed over the same period of time regardless of divided or undivided loyalties. This type of employment mostly occurs in illegal employment relationships where a separation wages have not been paid to terminate the ongoing and continuous at-will work relationship.

Definition of Consecutive Employment

This form of employment occurs when full and complete separation in a employment relationship become final by conclusive judgment of the court or by employer termination, pending all minimum separation wages have been paid, including all wages, reports, administrative fees, and other employment liabilities are concluded. Then a new employment relationship continues when the employee has been transferred to another employment relationship. Provided that no other work is necessary on the behalf of past employers and all employment vacancies have been filled.

Michael Clayton Martin
417 M Street
Salt Lake City, Utah 84103

IN THE COURT OF APPEALS

State of Utah

Michael Clayton Martin, Petitioner

Vs.

Petition for review

Workforce Services, Respondent

Appellant's Brief

Appeal No. 20080052-CA

Agency Decision No. 07-R-908

Nature of Dispute

The nature of this dispute arises from an employer directing an employee to quit to avoid financial obligations that were earned by the employee and an injured worker going without any compensation for more than six months at the expense of other family members. Other issues raised involve the habitual denial of claims by the State that have shifted head of household

responsibilities to other family members due to errors in program administration.

Jurisdiction

A petition for review is the review of a final decision or order of a governmental agency. (“agency” shall include agency, board, commission, committee or officer.)

Questions of Law

- 1) Whether the law provides for fair wage compensation to a pro se party who performs legal services on their own behalf before administrative agencies or state court systems?
- 2) Whether judicial officers erred in failing to protect the general welfare of a worker who alleged illegal employer activity that violated public policy as the basis for a cause of separation?
- 3) Whether the Board of Appeals erred in failing to shift the burden of proof to the employer after a showing of employer’s violations of public policy?
- 4) Whether the Department of Workforce Services erred in failing to grant wage separation pay for maintaining a connection to the employment market that exceeded minimum trade attachment requirements?

- 5) Whether the Department of Workforce Service erred in denying other general welfare benefits to a head of household claimant with multi-national composition issues upon evidence of no or insufficient income?
- 6) Whether accounting errors were made in figuring wage base computations and wage separation entitlements by claimant's employers and the administrative agency?
- 7) Whether multiple claims for separation wages can be figure separately against each employer upon account or exempt contribution as concurrent claims?

Who is the claimant employer?

The person or governmental entity, who directs controls or supervises the employee's activities, is the claimant's employer. A claim may arise against the agency who permits or suffers an employee to work, and becomes the employing unit for claims of work place separation. The United States Department of Labor defines "employ" to include the words "suffer or permit to work". The claimant guide states that a claimant must report all work and earning for any and all work in the following classifications. Work can be performed in any of the following types of employment.

Full-time or part-time work
Paid training for any employer
Military reserve or National Guard duty
Work for a non-profit organization or church.
Self-employment
Payment for providing for childcare, even in your own home,
Work on contract or commission basis,
Holiday, severance, vacation pay, tips,
Volunteer work,
Cash value of work performed in exchange for anything of value,

None of these work programs qualify for as bona fide contribution based labor according to the intake officer who has continued to deny any and all claims and disallow credit for work performed on a continuous and ongoing basis in these areas of work. Claimant protest these issues and the non calculated exempt wages of \$23,200 quarterly, \$92,800 annually that resulted in a loss of work due to no fault of the employee.

Illegal and Hostile Work Environments

The issue presented for consideration by this court is the theory that when an employer discharges and rehires an employee within the same hour or short period of time, and the employer's spurious action if not warranted by just cause, creates adverse consequences in the workplace. These consequences included a hostile work environment, age discrimination, worker harassment and employee fears of careless and wanton treatment as discussed as involuntary servitude and punishment for a crime that the employee may not be duly convicted.

United States Constitution, Amendment XIII states,

Neither slavery nor involuntary servitude, *except as a punishment for crime whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction.

Unlawfully Engaging a Protected Trade

Other laws also need to be considered when an employer engaging short term employment contracts. Temporary merchant activities are a protected form of trade in the United States. Contracting for hire with the sole purpose of covering a special event without specific licensure is illegal. Such hiring and firing on a short term basis may mirror the activities of a protected trade exclusive to licensed special event solicitors. Operating without a specific license for such activities can be construed as illegal and a violation of personal liberties held by solicitors.

Abuse of Employer Discretion

Utah Constitution Article XVI, Section 8, provides for the comfort, safety, and general welfare of any and all employees in the state. It is not in keeping with the spirit of neither United States nor Utah's constitution to employ a worker one day and leave the employee on the street the next. In master-servant employee relationships, the employer has a duty to maintain the comfort, health and safety of

the worker and provide an environment that extends life and security benefits beyond grave. Ten weeks compensation is the minimum security benefit billable to an employer for hiring and firing at-will.

Trade Attachment

In order to maintain an attachment to the claimant's field of work, the employee must maintain and report a work search at a minimum of two applications or two attempts to find work each week unless waved by the department for recall dates or rehire dates of less than ten weeks, otherwise the claimant is responsible to find new suitable work within the field that the claimant is qualified to perform.

Claimant has worked 2000 hours annually in maintaining trade attachments and claims that his work is valid credit toward worker training programs and apprenticeships.

Pre-Employment Discrimination

When a job becomes vacant or a new job is created, employers have a duty to engage fair employment practices. If the claimant qualifies for the job and applies for the position by expressing interest in the job opening, for the job to remain open gives cause for unlawful discrimination in the hiring and firing process. An unemployment claim may be awarded against these employers.

ADEA

The law prohibits employers from firing employees on account of age for workers over the age of 40. Claimant is a member of this protected class.

ADA

An employer is responsible to provide reasonable and adequate accommodations to persons who have a life altering disabilities that can not be cured with medicines or devises. The person need not disclose any disabilities to an employer, but if suspected by the employer reasonable accommodations must be provided.

Claimant does not claim any personal disabilities.

Protected Activities

Other instances, involve employers discharging the claimant for allegedly reporting unsafe workplace practices, or for filing a complaint for failure to pay wages for work performed, or for other illegal discharge issues that result in separation with no fault attributable to the employee.

Wages

Claimant has sent notice to the department of his protest of the incomplete record being maintained by the department of workforce services and employer fraud associated with these accounts. Yet, the department chooses to figure compensation on a consecutive basis, and points blames on the last employer for the former employer's mistakes. In concurrent work, each employer takes separate responsibility, thus paying the worker concurrently on all claims. Ongoing and continuous work has been suffered to be performed by the department of workforce services in providing information for the correction of this record and for separate accountability and the proper assessment of employer liability, (list bound separately). According to the Fair Labor Standards Act the time spent by the claimant to maintain records and gather information to correct records for the department is time suffered for the benefit of the department and is compensable time worked. The Utah State Constitution requires that a day's work be calculated at a minimum of eight hours. Utah Constitution Article XVI, Section 6, states that eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, County or Municipal governments; ... in this instances, the claimants undertaking is aided by a state governmental agency, the department of workforce services and wages are owed.

Wrongful Termination

At-will employment is perpetual and if terminated for no cause the employer has a duty to compensate the worker until new employment is found. Employers often cover this cost through an insured social benefit program like the department of workforce services, or personally pay at rates pre-determined by the social security office, otherwise the termination is illegal and full compensation is owed, and in some instances double and triple the amounts when employers act carelessly or maliciously, see page 026 lines 7-13... for a discussion of this issue.

Illegal Employment

Again, at-will employment exists as a perpetual or continuous relationship that ends when either the employer or the employee severs the ongoing relationship for cause or without cause at any time. It is illegal for an employer to hire and employee using a W-4 form of employment for continuous ongoing work relationship and then, for the employer to allow an employee to sit on his pay role without compensation as intended upon hire or that does not amount to full time work.

The Supreme Court has stated that employees subject to the FLSA must be paid for... *all* ... the time spent in “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily

for the benefit of the employer of his business. “*A person hired to do nothing or to do nothing but wait for something to do or something to happen is still working.*”

(Italics used to add emphases)

For work to not be paid during each pay period until terminated is illegal.

Employers who fail to pay the claimant to avoid reporting income to the department or to avoid paying unemployment compensation are violating the law.

If the court must terminate these relationships due to non-payment of wages, or other illegal act, back wages are owed from the hire date until date of final judgment.

For the employment security office that leaves the worker insecure for an endless period of time is not in equity and good conscience exercising its power granted by the Utah Constitution to provide for the comfort, safety, and general welfare of any and all employees. For this entity to continue to act without looking out for the best interest of the employee is otherwise violating the Supreme Court Rulings, the Fair Labor Standards Act, Overtime Laws and other Rules of Law, see table of authorities above.

Employment Transfers

If an employee must seek new work on account of an illegal employer relationship, the employee must be granted a weekly allowance of a minimum of 10 weeks and

a maximum 26 weeks compensation to secure new and legal work. See page 027.

Each employer has a separate account with the department for which separation benefits are paid to the employee and billed to the employer by this agency, the department of workforce services.

Computations of Time Worked

According to the Fair Labor Standards Act the time spent by the claimant to maintain records and gather information to correct records for the department is time suffered for the benefit of the department and is compensable time worked.

The Utah State Constitution requires that a day's work be calculated at a minimum of eight hours. Utah Constitution Article XVI, Section 6, states that eight hours shall constitute a day's work on all works or undertakings carried on or aided by the State, County or Municipal governments; ... in this instance, the claimant's undertaking is aided by a state governmental agency, the department of workforce services.

This issue of compensable time was ruled upon in error by the administrative Judge who ruled that pro se work means free work, see page 021 line 33. Pro bono is free work. Pro se is self representation.

The claimant guide also states that compensation is allowed for the claimant's attorney at rates pre-determined by the department, see page 16 of the claimant guide.

For pro se representation the minimum amount of compensation for continuous ongoing work would be the number of days work over a period of time at either a minimum statutory rate, or at the maximum prevailing rate determined by the secretary of labor plus the cash value of other benefits for contracts funded by the federal government according to the Davis Bacon Act.

Calculations of Weekly Benefit Amounts

Weekly benefit amounts are calculated according to rules of accrual accounting that include wages subject to and not subject to contribution rates, full, part-time and intermediate service work, including cash, bonuses, commissions, tips, and gifts. See page 47 for a discussion on these issues. Claimant makes protest that records maintained by the department are in error.

Employer's Failure to Pay Wages or Report Earnings

Employers who fail to pay the claimant according to the employer's normal pay periods are violating the law. The claimant has been harmed by inaccurate reports by employers that have caused the denial of benefits. These reports in error have caused unnecessary delays to the claimant's entitlements like schooling, work

training, food assistance for minor children and unemployment compensation. The burden remains the employee's to track and correct such accounting errors and is compensable time worked. The forgiveness of wages owed are gifts to the employer and are tacked onto the contribution rates for tax assessments as uncollected wages earned and costs taxable to the employer. See page 047 for a discussion on these issues.

Loss of Other Entitlements

Fringe benefits during times of little or no income are determined by family size and the officer for the department of workforce services denied assistance and left the issue to be determined by the court.

Utah code 30-2-10, provides homestead rights and the custody of children to be directed by the court.

Neither the husband nor wife can remove the other or their children from the homestead without the consent of the other, unless the owner of the property shall in good faith provide another homestead suitable to the condition in life of the family; and if a husband or wife abandons his or her spouse, that spouse is entitled to the custody of the minor children, unless a court of competent jurisdiction shall otherwise direct.

Since legal custody and guardianship of the claimant's household was determined by a judge of competent jurisdiction, the department is in error when disallowing the children their entitlements by changing our family size and disqualifying our family in a time of need. Custodial parents have the right to choose where the child maintains a continuous residence regardless as to where the child is located. All persons listed as household members are subject to the jurisdiction of the United States and are born or are being legally naturalized in the United States. The controlling law that governs this issue is Amendment XIV of the United States Constitution.

United States Constitution, Determinative Law

Amendment XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Our other children have the same privileges or immunities as our natural children who are born citizens of the United States. They are entitled to equal treatment under the laws. No state agency shall deprive them of this right granted them by the jurisdiction of court.

Waiting for work, rework, workplace shifting, and at-will employment

Other issues presented to the Administrative Judge that evidenced unfair employment practices were time spent waiting for work, rework, workplace shifting, and at-will employment.

Work Place Shifting and Time Waiting for Work

An example was given of waiting for work when the work truck had broke down discussed on page 031 line 8.... The employer suffered to claimant not to be compensated for work performed for the employer during this wait time of fifteen days or more is illegal. The judge ruled that because the claimant would not move tools to a new work truck that this was just cause to not to pay the claimant.

Claimant protested these factual errors see page 050. Claimant had moved tools to the other truck but was limited by safely concerns due to broken locks on the other vehicle. Regardless of tools being moved or not, it is unlawful for an employer to continue to employ the worker without continuing to pay the worker for every week worked regardless as to where the work is performed. The Department of Labor states, *"Hours worked include all the time during which an employee is required or allowed to perform work for an employer, regardless of where the*

work is done, whether on the employer's premises, at a designated work place, at home, or at some other location."

Changing to wages to commissions to avoid payment of wages is illegal as discussed on line 8 through 28 page 031.

Diminishing Wages

Themes found in the United State Constitution and Utah's Constitution provide for fair and just compensation that should not be manipulated by employers who diminish wages to avoid contract obligations. For example, Judge's wages are not to be diminished during their times of services by their supervisors in other branches of government, see Article III Section 1. ...the Judges shall ...receive ...a compensation, which shall not be diminished during their continuance in office. Other articles' have similar themes about fair and just compensation for Labors. Utah Constitution Article XVI, Section 1, protects the rights of the labor, stating that the rights of labor shall have just protection through laws "*calculated*" to promote the industrial welfare of the State. Cutting employee wages weaken the industrial welfare of the state when transportation, housing and employment and reemployment costs continue to rise thus lowering net wages in some instances

that fall below the federal minimum wage allowance. Utah Constitution Article XVI, Section 8, states that laws are to be construed for the comfort, safety and general welfare of any and all employees.

Fair Labor Standards Act

In calculating the hourly wages of employees, employers need to be aware of all time worked in each and every hour worked in a day and week ... the occasional careless statement by employers; thatthe claimant only worked a few minutes during that hour; therefore, the employee should not be paid... this carelessness is illegal. Or, the employer's demand that employees pay for tools, work clothing, transportation to distant remote locations, hotels, phone calls, food and entertainment cost without employer reimbursement and other additional cost of living expenses can violate an employee's right to a fair wage. Even the demand that an employee reimburse a business for broken tools or business losses can reduce wages to illegal rates when calculated on an hourly, daily, weekly, biweekly, monthly, semi-annual and annual basis.

If an employer uses at-will employment to employ an employee for one hour and requires that employee to provide \$7500 worth of hand tools to do the job, if the result is a loss of income, the employer has violated the Fair Labor Standards Act, and the act is illegal in the hour that work assignment is performed. Error in law found on page 050 paragraph 6.

Rework

An employer, who requires that free work be performed without compensation for rework, also violated fair workplace standards, and creates a hostile work environment. It is unsafe for workers, women and children when employers to violate public policy and sacrifice following the law for illegal work conditions as found on page 031 thru 034. All examples and evidence of Fair Labor Standards Acts violations found on page 050 paragraph 4 thru 053. Time correcting these issues is compensable time worked and the administrative judge made errors of fact and law and entered an illegal judgment according to the department of labor. The United States Department of Labor states that when an employee must correct mistakes in his or her work (or the work of others), the time must be treated as hours worked. The correction of errors, or “rework”, is hours worked, even when the employee voluntarily does the rework.” Claimant was asked to repair other employee’s work, without any compensation; see 029 line 21. Again, the claimant states emphatically, that “claimant cannot continue to work for free”. Claimant noticed the department of these factual errors on Page 050 paragraph 5 and the

department should have shifted the burden of correcting these errors of fact and law upon the employer.

One issue of correction would be that claimant was not paid at a higher rate for after hour's emergency work. This was an error in fact. See page 050.

Manifest Error

On page 043 line 5 shows manifest error. For the record the speaker is the claimant; and is not the employer. The claimant states that a meeting was held with the employer on May 25 and other meetings with the employer as notices to the board of appeal in a letter dated September 8, found on page 056.

Typically the employee asserts a wage claim violation, the employer shows proof of payment or non-payment, and the claimant show pretext or employer error in a burden shifting analysis test. No payment for wages has been paid or attempted to be paid since a year ago... April... despite evidence of ongoing work performed for the employer's benefit, including a statement that the employer is willing to suffer claimants wife to keep records of hours worked, and the employer repeatedly demanding information from claimant's wife for the employer's benefit. If the employer asks for the record...He should pays for the work. Yet the employer's refusal to pay for the work performed on the employers' behave is

evidence of violations of FLSA and Utah law allowing for husbands and wife to act as attorney's in fact and assert claims under Utah Constitution Article XVI, Section 8, requiring minimum wages for women and minors. Together with, Utah code 30-2-4, which protects a wife's right to wages and actions for personal injury.

A wife may receive the wages for her personal labor, maintain an action therefore in her own name and hold the same in her own right, and may prosecute and defend all actions for the preservation and protection of her rights and property as if unmarried. There shall be no right of recovery by the husband on account of personal injury or wrong to his wife, or for expenses connected therewith, but the wife may recover against a third person for such injury or wrong as if unmarried, and such recovery shall include expenses of medical treatment and other expenses paid or assumed by the husband.

Personal Injury and medical treatment

Information concerning the details of this claim is held as private information with the doctors. The claimant asserts violation of privacy laws and his right to medical treatment and other expenses paid in connection with this claim through the department of employment security. Claimant asserts on 026 line 38 that in concurrent employment relationships, each and every employer is liable for a workplace injury because all employers must maintain insurance and compensate a worker for any lost wages due to an industrial accident. Medical costs are billable

to the employer whose premises the worker was injured upon at the time of the accident. Event location and liability is discoverable through the doctors and a patient need not disclosed to any employer event information per the privacy laws that protect the claimant's medical information and privacy laws that protect new and concurrent employment offers being considered by the claimant. Utah Constitution Article XVI, Section 4, prohibits the exchange of blacklists by ...persons and associations. Claimant alleges the exchange of untrue and false information by employers, background reporters, and uninformed persons within the department of workforce services is the cause of a long spell of unemployment, underemployment and personal discrimination in claimant's efforts to secure a good job.

Conclusion

Fair and just compensation without diminishing wages while in good behavior is not only a constitutional right for Judges; fair and just compensation is a consistent theme found in both the United States and Utah's Constitutions. Compensation for work suffered or permitted to be performed is not an odd nor confusing theory as stated by Utah agents. It is just compensation with minimum and maximum assessments that can be figured at daily and hourly rates for the worker who

abstains from or performs work for another's benefit on a continuous and ongoing basis. United States Constitution, Article VI States that ... This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; *and the judges in every state* shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The themes found in this Constitution and within the state constitution regarding fair and just compensation without diminishing wages for any and all employees are the supreme law of the land, and judges in every state have concurrent jurisdiction to make rulings that stand with these rules of employment law and to be bound thereby.

Fair and just compensation as directed by the table of authorities is what is sought in a review of the judicial decision of the Department of Workforce Services and the claimant asks this court to affirm a remedy that is calculated to benefit the employee and the best interest of the labor.

Remedy

The claimant requests wages earned according to rules governing waiting time worked for those employers who failed to report information to the department of workforce services in an accurate and timely manner.

The claimant request the minimum separation benefits of ten weeks, and when justified, the maximum rate, against each and every employer who hires and fires illegally.

The claimant request reasonable compensation for work performed as a pro se party in correcting errors in judgment that violated the Fair Labor Standards Act and minimum wage requirements for work suffered or permitted to be performed by the Department of Workforce Services and other employers who have failed to pay the claimant and report earnings.

That fair and just compensation be provided to claimant's wife and children who suffered unnecessary work to cover the expenses of an injured worker and head of household because of the department's failure to provide unemployment compensation when due and the department's failure to provide other welfare benefits because of discrimination based on national origin issues.

Together with, any or all other relief that this court finds fair and just on behave of the claimant or his family like job reinstatement or new lawful employment in suitable work for which the claimant is qualified.

However, if this brief fails to conform to attorney standards of a brief fit for a judicial review and full consideration of the final decisions and orders of the Department of Workforce Services, Claimant request legal assistance in presenting claims for full plenary consideration by this court pursuant to 35A-3-610, which provides for legal representation at hearings in response to issues on appeal.

Claimants also assert his right under the Utah Constitution Article I, Section 11; provides for open access to courts *for personal injury or loss of property or reputation*. The law states that

...All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

If this brief conscribes to the rules governing a brief of the appellant, the claimant ask that the remedy requested is administered without denial or unnecessary delay.

Michael Martin

Michael Clayton Martin, Wednesday, July 09, 2008

Utah Court of Appeals
Case # 20080052 CA

I Michael Martin certify that I delivered the Brief of Appellant on the following
Persons and Governmental Agencies together with copies for the Court of Appeals.

QA

Suzan Pixton #2608
Department of Workforce Services
Appeals Office
Salt Lake City, Utah

Hand Delivery on July 10, 2008

Court of Appeals
State of Utah
Salt Lake City, Utah 84111

Faxed in part with notice of other delivery on July 4, 2008 followed by hand delivery on
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Michael Clayton Martin



Michael Clayton Martin

v.

Department of Workforce Services

Confidential Information Included

Addendum to Appellant's Brief
(Filed Separately)

In the Court of Appeals
State of Utah

Petition for review

Case # 20080052CA

Respondent,

Suzan Pixton #2608
Department of Workforce Services
Appeals Office
P.O. Box 45244
Salt Lake City, Utah 84145

Petitioner,

Michael Clayton Martin
417 M Street
Salt Lake City, Utah 84103

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Attachments

Monthly Employment & Income Statement Temp Agency (Agency Employment Relationship)

Self Employment (Independent Contractor Employment Relationship)

Employment Information (Master Servant Employment Relationship)* *Wages Hourly or Yearly*

Wage Data List (Claimant Protest Information as INCORRECT and INCOMPLETE)

Employment Termination (Date of Hire and Date Last Worked)

Addendum to Appellant's Brief

Claimant Guide Excerpts

Reproduction of parts of the record of central importance such as contracts or other documents

Privacy and Confidentially

DWS is not allowed to release information about your claim to your spouse, friends, bank, credit union, or any other party unless there is a signed release form you or a court order. Otherwise all information necessary to determine eligibility is confidential. Utah law requires that employers report to the Department wage and job separation information for all workers who are covered under the Utah Employment Security Act.

Introduction

Unemployment insurance is not welfare, social security, or a disability payment. The intent of unemployment insurance is to pay benefits to eligible claimants during times of unemployment when suitable work is not available.

According to the claimant guide an account is kept for each and every employment activity. Each stream of income has a base period for the figuring of each and every new claim, if the base period of earning qualify for a benefit amount, then a weekly benefit can be determine on that line of work if the claimant is able and available for work. A bona fide claim arises when an employee for no fault of his own loses a source of income. If the claimant is able to work and available of work then, the claim must be paid for each week the claimant is available and able to work with a minimum of 10 and maximum of 26 weeks payable over a 52 week period.

Quoting for the claimant guide, *"You must be physically and mentally able to work. If you are ill, injured, on medical leave or unable to work for any other reason, you may not be eligible for benefits for that period of time."*

You are required to report that you are not available for work when any condition exists which would prevent you for working, accepting work, or seeking work. This includes, but is not limited to illness, injury, hospitalization, incarceration, school attendance, or

loss of child care or transportation. You may be required to provide evidence of your ability to work, such as a doctor's statement."

So long as the claimant is available and able to work, the claimant is entitled to compensation for the work search performed in looking replacement income within that line of work. A worker is allowed to earn up to 30% of your weekly benefit amount before any deduction is made from your benefits. If the claimant exceeds the benefit amount in that line of work then no benefit is paid during that work week.

Each claim is maintained separately. If the claimant has been working more than one job and each job qualifies for benefits that have been earned or will be paid in two or more calendar quarters and the total base period wages are 1.5 times the wages you earned in your highest quarter, then you have a weekly benefit payment billable to the employer for the lost wages in that line of work.

If the application explained above does not apply then a minimum amount of wages can be calculated by proving at least 20 weeks during the base period and earned a specified minimum dollar amount each week. Proving employer error is a form of work that can continue beyond 20 weeks during the base period. A minimum wage is owed for this work. This is the contention of the claimant.

Note: A work search attached to a particular line of work is evidence that the claimant has not quit or abandoned his ties to the trade or occupation. A person is not required to accept work if a the position offered is vacant due directly to a strike, lockout, or other labor dispute, or if conditions offered are much less favorable to you than those for similar work in the locality,

Deferral of Work Search Requirements

Temporary layoffs with a definite date of recall within 10 weeks or you are returning to work in three weeks. However, you are required to seek and accept suitable work and make an effort to find work by consistently making the types of personal efforts to find work which are customary for persons in the same or similar occupations who are genuinely interested in obtaining employment immediately.

It is your responsibility to keep a list of your employer contacts. The list should include the following date of contact, company name and phone number, person contacted type of work, method of contact and results.

This list is a work in progress. This burden will rest upon me until a final decision is made regarding my employment files for each and every employer who has permitted or suffered me to work on their behave.

Note: The Department has waved the reporting requirement until this issues of earnings is resolved as to the right of the claimant when there is a question or an issue on your claim that could result in a denial of benefits.

The question and issue is work and earning reporting. You must report all of your work and earnings for the week in which you worked, even if you have not been paid. While claiming benefits, it is your obligation to accurately report your gross earnings before taxes or any other deductions. This amount includes money that you received or will receive (yearly*) for that work week including the cash value of volunteer work or any other work performed in exchange for anything of value.

Unless the earnings are attributed to each line of work, then the worker's claims could be denied due to earnings exceeding the maximum weekly benefit amount. The program is designed to allow unemployment compensation plus 30% in other earnings which is nearly an equivalent of undiminished wages when benefits are figured properly.

Note: In applying minimum wages rules, the claimant may have been suffered to work a 1000 hours of pre-employment to find and obtain work, then the employer may have suffered the worker to continue another 1000 hours to find his next job. The Employee may have suffered this year after year.

Rights of the Claimant

Claimant must be given the opportunity to respond to any information presented to the Department that could result in a denial of your benefits.

You have the right to appeal any decision on your claim. In filing an appeal you will receive a copy of the records and documents used in making the decision denying benefits.

Legal Representation

The unemployment insurance appeals process does not require legal representation. Most claimants represent themselves. During the hearing, all parties will be assisted by

the Administrative Law Judge in presenting their evidence. If you hire someone to help you with your appeal, it is your responsibility to pay any fees. The law requires this person to submit a written request for approval of fees to the Department prior to any payment. A request form and complete instructions are available from the Appeals office.

Issues

Docketing Statement presents two questions to be determined. Issues on appeal:

Issue 1 Whether \$4.95 per hour is Utah's minimum wage, \$5.65 is the Federal minimum wage, and 10¢ per hour is exempt wage compensation.

Determinative Law United States Constitution, Article VI and Amendment XIII

Standard for Review: Fair Labor Standards for computation of hours worked, Workplace Safety Standards, Concurrent or Dual Employment Standards, Privacy Standards, At-Will Employment Standards and Reasonable Attorney Fees

Issue 2 Whether the denial of job separation entitlements and other general welfare benefits to a household with multi-national origins was prohibited discrimination adverse to the best interest of a married adult male head of household with dependent children.

Determinative Law United States Constitution, Amendment XIV

Standard for Review: Title VII, Public Policy, ADA, ADEA, and Social Welfare Benefits and Employer Separation Standards.

Important Forms and Questions

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Relevant Question: Have you filed an unemployment claim against this employer?

Rules

Fraud

Failure to accurately report hours and earnings

Failure to be available for work

Failure to actively seek work

Identity Theft

Misclassification of workers

Incorrectly reporting wages

Deceptive Employment Practices

Providing false information to prevent an otherwise eligible claimant from obtaining benefits

Failure to pay unemployment insurance, taxes, report necessary information or prohibit inspection from departments

Fines, penalties and/or Criminal Prosecution 76-8-1301

You commit fraud if you make false statements, provide false information, or withhold information to obtain benefits for which you are not eligible. Failure to report earnings while filling and failure to report a job separation are examples of fraud.

Only you are authorized to file your claim for benefits. The responsibility for filing weekly claims cannot be delegated to another person, including your spouse. You will be held responsible for any false information provided.

Trade Act Benefits

Trade Act benefits assist workers who become unemployed as a result of (1) foreign imports or (2) because of trade agreements with certain countries such as Canada or Mexico. If you were laid off for one of these reasons, and were included in a petition approved by the Department of Labor, you may be eligible for these benefits.

Trade Readjustment Allowances (income support)

Training allowances

Job-search allowances

Relocation allowances

Tax credit or subsidies for qualified health insurance

Michael Clayton Martin July 18, 2008



State of Utah
Department of Workforce Services
MONTHLY EMPLOYMENT & INCOME STATEMENT
TEMP AGENCY

Date Received

PID#:

Name: _____ SSN: _____ Case#: _____

EMPLOYMENT INFORMATION:

- Date employee registered with agency: _____
- Date employee began new assignment: _____
- What is the status of the employee's new assignment? (Circle one)
Full-time Part-time Temporary Other _____
- If temporary, how long will the assignment last? _____
- Wage or salary: _____ /hr _____ /mo/yr
- Hours per week employee will be working? _____ /wk
- Circle the days of the week employee will be working: Mon Tue Wed Thu Fri Sat Sun
- Time of day: From _____ a.m./p.m., To _____ a.m./p.m.
- How often is employee paid? (Circle one)
Daily Weekly Every other week Twice per month Once per month
- Day check is available: _____
- Date of first check received: _____

IF YOUR ASSIGNMENT HAS ENDED:

- Date last worked: _____
- Date last paid: _____
- Gross pay of last check: _____
- Gross pay received in final month: _____
- Please provide any paystubs received during the last 90 days.

TEMP AGENCY INFORMATION:

- Name of temp agency: _____
- Address: _____
- Name of supervisor: _____
- Phone #: _____ Fax #: _____

Temp Agency Signature

Date



State of Utah
Department of Workforce Services
SELF-EMPLOYMENT LEDGER

Date Received

Name: _____ Case Name: _____
Business Name: _____ PACMIS #: _____
Month Covered: _____ Hours Worked Per Week: _____
Gross Income: \$ _____
(minus)
Total Expenses: \$ _____
= Net Income: \$ _____

****Allowable Business Expenses:** Most business expenses that you have paid may be subtracted from your self-employment income. If you are uncertain whether or not a business expense is allowable, please list it. Examples of expenses that are NOT allowed and should NOT be listed include:

- Monthly telephone charges unless there is a separate business phone (Long distance telephone charges that are business related may be deducted);
- Federal, state and local taxes;
- Mileage expenses from the home to the first and last work location cannot be deducted even if your business is located in your home.

With my signature, I certify I have listed all income and expenses below. I also certify that I have receipts or some type of verification on file for all listed income and expenses reported on this form, and I will keep them on file for a least one year from date reported.

I declare and affirm under the penalties of perjury that the information has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Signature: _____ Date: _____

Equal Opportunity Employer Program

Auxiliary aids and services are available upon request to individuals with disabilities by calling (801) 526-9240. Individuals with speech and/or hearing impairments may call Relay Utah by dialing 711. Spanish Relay Utah: 1-888-346-3162.



State of Utah
Department of Workforce Services
EMPLOYMENT INFORMATION

Date Received:

Team: _____

PACMIS #: _____

SSN: _____

Case Name: _____

Employed Person: _____

Please answer the following questions about your work and return this immediately to your local DWS office.

1. What date did your present employment begin? _____
Month Day Year

2. What type of job/work will you be doing (Clerical, Manual Labor, Technical, etc.)?

3. According to the employer, what is the status of your employment (circle one)?
Full Time Part Time Temporary Applied Previous Employer Terminated Other _____

4. If this is a temporary job, how long will it last?

5. List your wage or salary: Wage \$ _____/hr or Salary \$ _____/mo.; year

6. How many hours do you normally work each week? _____

Circle the days of the week: Mon Tue Wed Thu Fri Sat Sun

Time of day: From _____ To _____ Does your schedule vary? ☐ Yes ☐ No

If yes, please list. Minimum hours _____ Maximum hours _____

7. Circle how often you are paid: Weekly Every two weeks Monthly Twice a Month Other

8. Write the day(s) of the week or month your paycheck is available: _____

9. What date will you (or did you) receive your first check? _____
Month Day Year

If you have not received your first check, please estimate gross amount or number of hours to be paid on this check. _____

10. When does your pay period end? _____

11. Do you receive tips or commission? ☐ Yes ☐ No Amount \$ _____

Do you or will you receive bonuses (Christmas, merit, etc.)? ☐ Yes ☐ No

If yes, when: _____

12. A. Does your employer offer Medical, Health, Accident, or Comprehensive Insurance? ☐ Yes ☐ No

If yes, please indicate benefit type:

Full name of the insurance company:

B. Does your employer offer employment benefits, such as Child Care, Retirement, etc.?

If yes, please explain: _____

13. Information about your employer:

*Name of Company: _____

*Company Address: _____

*Name of Supervisor: _____

*Phone #: _____

Wage Data List

10/03/07

SSN: *** - ** - 6130

| Employer ID | Employer Name | Quarter | Wages | Name |
|-------------|--|---------|-------|-------------------|
| 371683-0 | MUNSON MECHANICAL INC | 2/2007 | 5,180 | MARTIN, M |
| 371683-0 | MUNSON MECHANICAL INC | 1/2007 | 9,902 | MARTIN, M |
| 099756-1 | STOTT PLUMBING AND HEATING CORPORATION | 1/2007 | 153 | MARTIN, MICHAEL C |
| 102232-0 | DAN JONES AND ASSOCIATES | 4/2006 | 67 | MATIN, M |
| 348631-0 | INNOVATIVE STAFFING OF UTAH INC | 4/2006 | 135 | MARTIN, MICHAEL C |
| 910331-0 | PARK CITY MUNICIPAL CORP | 4/2006 | 1,834 | MARTIN, M C |
| 202779-1 | PAY AMERICA OF UTAH INC | 4/2006 | 419 | MARTIN, M |
| 707650-0 | TELECRAFTER SERVICES LLC | 4/2006 | 550 | MARTIN, M |
| 707650-0 | TELECRAFTER SERVICES LLC | 3/2006 | 3,629 | MARTIN, M |
| 129069-1 | M AND M ASPHALT SERVICES INC | 2/2006 | 95 | MARTIN, M |
| 707650-0 | TELECRAFTER SERVICES LLC | 2/2006 | 875 | MARTIN, M |
| 164668-0 | TELEPERFORMANCE USA INC | 2/2006 | 3,615 | MARTIN, MICHAEL C |
| 318503-1 | USA HOME LOANS INC | 2/2006 | 238 | MARTIN, M |
| 090861-0 | K AND T CORP | 1/2006 | 127 | MARTIN, MICHEAL |
| 076609-0 | PARK CITY TRANSPORTATION SERVICES INC | 1/2006 | 3,657 | MARTIN, MICHAEL C |
| 050312-3 | THUR DAVID LEROY | 1/2006 | 153 | MARTIN, M |
| 402181-0 | KAPONO ROCK INC | 3/2005 | 155 | MARTIN, M |
| 026895-1 | PRODUCT DEVELOPMENT CORP | 3/2003 | 111 | MARTIN, MICHAEL C |
| 194439-0 | PAPA JOHNS PIZZA | 2/2001 | 51 | MARTIN, M |

INFORMATION REQUESTED
BY CUSTOMER

Michael Martin



Department of Workforce Services
Employment Termination

ATTENTION EMPLOYMENT COUNSELOR: Complete this section and the last section before giving the form to the customer.

Customer Name _____

Case Number _____

Social Security Number _____

Date _____

Employment Counselor _____ Phone _____ Fax _____

ATTENTION CUSTOMER: (Please read and sign)

I authorize any person or institution to release information to the Department of Workforce Services. I understand that this information is **confidential** and will be used only to prove my eligibility for benefits or to determine an appropriate level of participation in employment activities. Any person or institution that gives this information is released from any liability.

Customer Signature _____

Date _____

Have you filed for Unemployment Insurance? ☐ Yes ☐ No

Unemployment Claims number: (801) 526-4400 or toll free 1-888-848-0688

Remember changes of employment need to be reported within 10 days of the change.

ATTENTION EMPLOYER: Complete this section and return to DWS Employment Counselor.

The above named customer reports she/he no longer works for you. Please provide the following information within 10 days to the Employment Counselor listed above. Do NOT send this form to the Unemployment office.

Was this employee working more than 30 hours per week earning minimum wage or more? ☐ Yes ☐ No

Date of hire: _____

Last day worked: _____

Date final check available to the employee: _____

Gross amount of last paycheck: \$ _____

Total **gross pay** employee received in the final month: \$ _____

Reason for leaving: ☐ Quit (list reason) _____ ☐ Laid off (date) _____

☐ Fired (list reason) _____ ☐ Leave of absence (length) _____

☐ Other (reason) _____

Is there an option for continued medical insurance? ☐ Yes ☐ No If yes, at what cost? _____

Does the employee have any retirement and/or 401K benefits? ☐ Yes ☐ No If yes, how much? _____

Any additional comments: _____

I, Michael Martin certify that I delivered copies of the Addendum to Appellant's brief to the following persons.

Hand Delivered on July 18, 2008

Susan Pixton # 2608
Department of Workforce Services
Appeals Office
Salt Lake City, Utah 84145

Court of Appeal Office
Salt Lake City, Utah 84111

Michael Clayton Martin
July 18, 2008