

1987

John H. Wakefield v. Board of Review of the
industrial commission of Utah and department of
Employment Security, and City of Orem,
Respondents : Brief of Appellant

Utah Court of Appeals

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DOCKET NO. 870565-CA

IN THE COURT OF APPEALS OF THE STATE OF UTAH

John H. Wakefield, Claimant-Petitioner-Appellant

vs:

Board of Review of the Industrial Commission of Utah and
Department of Employment Security, and City of Orem, Respondents

Case No. 870565-Ca

Priority Code - 6

Brief of the Appellant

For

Review of Decision of the Board of Review of the
Industrial Commission of Utah

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Timothy W. Hagg
Clerk of the Court
Utah Court of Appeals

TABLE OF CONTENTS

	Page
I. JURISDICTION	1
II. NATURE OF PROCEEDINGS	1
III. THE ISSUES	2
IV. DETERMINATIVE STATUES	3
V. STATEMENT OF THE CASE	4
VI. SUMMARY OF ARGUMENT	6
VII. ARGUMENT	6
VIII. CONCLUSION	12

TABLE OF AUTHORITIES

1. Utah Code Annotated, 1953 (as amended) Section 35-4-5 (a), pages 3, 4, 11, and 12 of Appellant's Brief.

I. JURISDICTION

The Court of Appeals of the State of Utah as the Court since it is the appellant forum for review of administrative orders of the Industrial Commission of the State of Utah.

II. NATURE OF PROCEEDINGS

This appeal of John Wakefield, appellant, is from an order of the Board of Review of the Industrial Commission of Utah, Department of Employment Security in which the Board of Review of said administrative agency denied appellants claim for unemployment compensation. Said decision of the Board of Review is dated November 16, 1987.

Prior proceedings concerning this case are as follows:

A. August 10, 1987 appellant's claim for unemployment insurance benefits.

B. Employer Notice of Claim filed on August 20, 1987.

C. Decision of Eligibility for Unemployment Insurance Benefits denying benefits dated August 28, 1987.

D. Appeal to Administrative Law Judge which is dated August 31, 1987.

E. Hearing held before Administrative Law Judge on September 22, 1987.

F. The Decision of the Administrative Law Judge dated September 28, 1987, which was issued in amended form on October 5, 1987.

G. Appeal to the Board of Review of the Industrial Commission dated October 1, 1987.

H. Decision of the Board of Review dated November 17, 1987.

I. Docketing Statement filed December 30, 1987.

III. THE ISSUES

Whether the denial of unemployment compensation benefits to the appellant is lawful in light of the totality of circumstances surrounding appellants employment with Orem City. An issue is also raised on whether Mr. Wakefield in light of his circumstances on a lay-off from Geneva was required to accept employment at three-dollars and fifty-cents per hour with Orem, and if requiring Mr. Wakefield to maintain his employment with the City of Orem was a matter of form and not substance.

IV. DETERMINATIVE STATUTES

Utah Code Annotated, 1953 (as amended) provides at Section 35-4-5 "Ineligibility for benefits. An individual is ineligible for benefits or for purposes of establishing a waiting period:

Voluntarily Leaving Work.

(a) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount. A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall, in cooperation with the employer, consider for the purposes of this act the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

Notwithstanding any other provision of this section, a claimant who has left work voluntarily to accompany, follow

or join his or her spouse to or in a new locality does so without good cause for purposes of this subsection."

V. STATEMENT OF THE CASE

This appeal is from a ruling of the Industrial Commission of Utah, Department of Employment Security in which the Board of Review of said administrative agency denied the appellant's claim for unemployment compensation. Mr. Wakefield, a former Geneva Works employee, was working for Pinkerton Security Services when he quite said employment to accept a position with the City of Orem and began to work for the City of Orem on or about May 18, 1987 and worked for two days for a total of 16 hours. It is apparent from the record in this case that the hiring of Mr. Wakefield by the City of Orem did not follow the general hiring practices of the City of Orem. Mr. Wakefield's contention has been that the City of Orem hired him as a part-time employee for six-dollars and sixty-cents per hour. Mr. Wakefield has further contented that upon his arrival on the job with the City of Orem he was informed by a supervisor that he would be paid three-dollars and fifty-cents per hour. Further, while in the employ of the City of Orem, Mr. Wakefield's vehicle was vandalised.

In addition, Mr. Wakefield contends that on his last day of work he had a discussion with his supervisor in which he complained of the vandalism of his vehicle, payment of the three-dollars and fifty-cents per hour, safety of the employee while operating equipment for the city of Orem, and further that he would return to work upon resolution of these problems. Mr. Wakefield left numerous telephone messages for his supervisor and it is Mr. Wakefield's contention that none of the telephone calls were returned.

After a period of time, Mr. Wakefield applied for unemployment compensation on August 10, 1987. Subsequent to that application Mr. Wakefield's claim for unemployment benefits have been uniformly denied by the Utah Department of Employment Security originally and through various appeals of that original decision. Mr. Wakefield has complied with and has completely exhausted the administrative remedies available to him under the Utah Employment Security Act.

A further issue was raised at the September 22, 1987 meeting before Administrative Law Judge, Stanley H. Griffin. That issue was whether Mr. Wakefield was required to accept employment at a wage less than \$4.90 per hour. The Administrative Law Judge made no finding of the affect of the Trade Readjustment Act and the requirement for the Mr. Wakefield to accept employment at less than \$4.90 per hour.

VI. SUMMARY OF ARGUMENT

The appellant, Mr. Wakefield, has been disqualified from the benefits of Unemployment Compensation Insurance since he left his employment with the City of Orem without good cause. Appellant's argument is that with the totality of the circumstances surrounding his employment with Orem City, he should not be denied eligibility for benefits of Unemployment Compensation Insurance since Mr. Wakefield left work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

Further, the Administrative Law Judge in his Findings of Fact and Conclusions of Law does not address the issue of the affect the Trade Readjustment Act has on Mr. Wakefield's situation as it relates to the suitability of the work which Mr. Wakefield accepted with the City of Orem.

VII. ARGUMENT

The appellant's claim for unemployment compensation insurance benefits has been denied by the decision of Administrative Law Judge, Stanley H. Griffin and affirmed by the Review Board of the Industrial Commission. This decision of the Administrative Law Judge does not give the weight of evidence

to the totality of circumstances surrounding Mr. Wakefield's employment with the City of Orem and his reasons for separation from that employment.

Mr. Wakefield's first contact with the City of Orem was for a position as a concrete worker. Mr. Wakefield was told that that position paid \$6.66 per hour. From the Transcript of the Hearing dated September 22, 1987 (Transcript) at Page 000009 "I'd applied for a-- job at Orem City. It was a concrete worker job for 6.66 and hour and they filled it with somebody else. And he called me up and said he wished he'd have hired me, this Mr. Heaton of Orem, City. The other guy didn't turn out. And he said that he was gonna try and create a job for me. He called several times. Got a hold of me, said that he could create some type of job partly running the equipment, labor type; so I-- I quit Pinkerton's and went there. And I was assuming, you know, that the job would be close to 6.66 and hour". The transcript at page 000022 D'Avington interjects into a discussion of the rate of pay for a concrete worker, "Oh, probably 4 to \$6". Further, Judge Griffin's question to Mr. Wakefield, "Who told you the pay would be 3 and a half?" At page 000019 of the Transcript was responded to by Mr. Wakefield, "Mr. Heaton." At page 000023 of the Transcript

during a discussion concerning what Mr. Wakefield was told about the rate of pay with the City of Orem. Mr. Heaton states, "I-- Just can't remember our conversation for sure". Also, at page 000021 of the Transcript Mr. Heaton states, "He was interested in concrete work and therefore we start concrete workers generally at 5.40; and when he said 3.50, we may have talked about 3.50, but I-- the way I remember it was there were-- was that he was going to go to work on our concrete crew which paid a little more 'cause it was specialist and we needed some mowing done so he graciously accepted to go on a mower for a couple of days. And I thought it was to be a 40-hour a week. However, I-- I might say that we can hire temporary help for 40-hours a week for 6 months. And there was some talk about 19 hours a week to a certain date so that we could have him later for a full 40-hour a week that would run us up into maybe November. And he called and said that he was having some family problems. He was good to call and say that-- say that he couldn't be in. But I-- I thought that he was going to return until finally he stated that he didn't look like he'd be able to return".

It is apparent from the foregoing references to the Transcript Mr. Wakefield thought he was to be hired at a rate of pay of \$6.66 per hour. Neither of the city of Orem

witnesses, either Ms. D'Avington or Mr. Heaton denied that such discussions took place. It was only after Mr. Wakefield had quit his job with Pinkerton did Mr. Heaton inform Mr. Wakefield that the rate of pay would be \$3.50 per hour. Mr. Wakefield remembers for certain that Mr. Heaton told Mr. Wakefield this information. Mr. Heaton does not remember. Further, Mr. Wakefield had other problems during his employment at the City of Orem. Mr. Wakefield's vehicle was vandilised, he made safety complaints, and he had family problems. Mr. Wakefield denies at page 000022 of the Transcript that he quit because of family problems, "No, that wasn't-- I Mean that-- that was my personal problem. I had my hands full there, too". Concerning the damage done to Mr. Wakefield's vehicle, Mr. Wakefield at page 000024 of the Transcript states "I did" in a discussion of reporting the damage done to his vehicle. Mr. Heaton states of the same subject matter, "I-- some reason I just don't quite remember that, but-- but he could have done".

The record on fill herein is perhaps more important from the aspect of what is not present as to what is present. For example, Ms. D'Avington claims to have hiring papers on on Mr. Wakefield, but are not presented as evidence. No evident was presented as to Mr. Wakefield's scheduled hours

of work or indeed a written work schedule.

In the totality of Mr. Wakefiel's experience with employment at Orem City in first being told that he would be employed at \$6.66 per hour, then in reliance upon that statement by a supervisor of Orem City quitting his job with Pinkerton, then being employed by Orem City at \$3.50 per hour and then subsequently being paid 4.50 per hour some three months after his termination of employment with Orem City, in totality provide circumstances under which equity and good conscience it would be unreasonable to deny Appellant's claim for unemployment compensation.

This circumstance of Mr. Wakefield's brings to mind the unfairness with which employees are treated by the judicial system in the State of Utah. The courts have generated a line of decisions under which an employee without a written fixed term of contract can be terminated at will no matter which representations of the employer has made to the employee. This instance circumstance is another example of the judicial system within the State of Utah providing a license for employers to represent one situation to employees and then act entirely differently than what was represented to the employee.

If this court were to find against the Appellant, this court would be rewarding the City of Orem for its mis-communications and mis-representations.

It is not mere happenstance that the Utah Employment Security Act is couched in the terms that denial of unemployment benefits should not be against equity in good conscience. A statute which is written in and couched in terms of equity should be interpreted in an equitable manner. The Administrative Law Judge failed to provide any reasoning concerning the equitable merits of the case in his findings of fact and conclusions of law. Equity would dictate that the Appellant's claim for benefits be approved.

Further, the Administrative makes no Findings of Act or Conclusions of Law that indicate the affect the continued employment with the City of Orem would have had upon his application for unemployment benefits which had expired on August 1, 1987. In light of the uncertainty of Mr. Wakefield's employment schedule with the City of Orem, inconclusive evidence presented by the City of Orem as how Mr. Wakefield would have been scheduled, the lack of contact by the City of Orem with its employee, Mr. Wakefield should not be denied the benefits of unemployment compensation insurance.

VIII. CONCLUSION

From the foregoing arguments it can only be concluded that Mr. Wakefield's unemployment with Orem City was as the result of reasonable action taken by Mr. Wakefield which he did within the bounds of equity and good conscience. Therefore, Mr. Wakefield's claim for unemployment compensation benefits should be granted.

DATED this 11th day of March, 1988.

Robert M Orehoski
ROBERT M. OREHOSKI
Attorney for Appellant

I hereby certify that I hand delivered a true and correct copy of the 11th day of March, 1988 of the foregoing to the following:

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through

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