

1986

Mini Spas, Inc. v. Board of Review of The Industrial Commission of Utah, Department of employment Security, and Kathryn F. Preece : Brief of Appellant

Utah Supreme Court

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W. Andrew McCullough; McCullough, Jones, Jensen, and Ivins; Attorneys for Petitioner.

Linda Wheatfield; Special Assistant Attorney General; Attorneys for Respondent.

Recommended Citation

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UTAH SUPREME COURT
BRIEF

UTAH
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860212
IN THE SUPREME COURT OF UTAH

STATE OF UTAH

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MINI SPAS, INC.,

Plaintiff,

vs.

THE BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF
UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY, and
KATHRYN F. PREECE,

Defendants.

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Case No. 860212
(Category #6)

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BRIEF OF PLAINTIFF

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Petition for Review of a Decision of the Board of Review
of the Industrial Commission of Utah, Department of Employment
Security

---ooo0ooo---

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Attorneys for Plaintiff

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FILED

JUL 18 1986

Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF UTAH

STATE OF UTAH

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MINI SPAS, INC.,

Plaintiff,

vs.

THE BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF
UTAH, DEPARTMENT OF
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Defendants.

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Case No. 860212

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STATEMENT OF ISSUES

There are two issues in this action. The first issue is whether the Board of Review of the Industrial Commission of Utah, Department of Employment Security, was arbitrary and capricious in its treatment of the employer-petitioner in this matter in refusing to take into account, in its decision, information provided to it by the employer, but not within the time requested by the Department. The companion issue is whether the rules of the Department of Employment Security, adhered to by the Board of Review, regarding "untimely protests" are in conflict with the public policy of the State of Utah, as evidenced by the Utah Rules of Civil Procedure, adopted by this Court.

RULES AND REGULATIONS

Following is the pertinent text of Rule 60(b) U.R.C.P. and

Rule A71-07-1:7(111)(C) of the Rules and Regulations of the Department of Employment Security:

Rule 60(b) U.R.C.P.:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3) or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule A71-07-1:7 (iii) (c) Rules and Regulations of the Department of Employment Security:

All base period employers and all employers for which a claimant worked after the base period, but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed. All employees who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges. All such protests and requests must be made in writing to the Department within ten days after the notice is issued

and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer. If the basis for the request of relief of charges would have justified such relief, but the employer fails to provide separation information within the time limits of the request or make a timely protest, such charges may not be considered erroneous charges from which the employer can later be relieved. An exception may be allowed for an untimely protest upon a showing of good cause. Good cause for failing to file a timely protest will be established in accordance with guidelines for late filing of other appeals.

STATEMENT OF THE CASE

Plaintiff is an employer, with his principal place of business in Salt Lake County. On July 26, 1985, a former employee, Kathryn F. Preece, filed a claim for unemployment insurance, claiming that she was wrongfully discharged. In late July, the employer received a Notice of Claim and Eligibility, and employer charges (R36), dated July 21, 1985. This notice was received by the employer, despite the fact that it had been mailed to the wrong address. Unfortunately, despite the fact that the Notice of Claim and Eligibility was received (on a "hit and miss" basis), the earlier request for additional information regarding the reason for the discharge was not received by the employer, and could not have been responded to. After much additional correspondence, the Department agreed to set aside the eligibility notice and to correspond through counsel, to avoid continuing communication problems. The lost communication from the Department was not the first item mailed by the Department to the wrong address and lost. See R. 36 - 39. The Department once again sent out

a written request for information regarding the termination of this employee on December 18, 1985. Due to the fact that it had to be routed through counsel, due to the unsettled nature of the Christmas season, and due to what the employer claims was excusable inadvertence, the request was overlooked for a period of time, but was filled out by the employer, and returned on January 26, 1986, (R62). Apparently, on or about January 28, 1986, a decision was mailed, in which Ms. Preece was once again awarded unemployment insurance, to be charged to the employer's benefit ratio account, based in part on the Department's refusal to consider the employer's objections, despite the fact that they had been received prior to the decision. The employer's objections were substantial, claiming that the employee was discharged because of illegal drug usage and prostitution activities. No copy of that mailing from the Department can be found in either the records of the employer, or in the records of this case. At any rate, an appeal of that decision was sent on January 30, 1986, and received by the Department on February 6, 1986, (R60). On February 1, 1986, the Administrative Law Judge sent a notice of hearing, informing the employer that, on March 3, 1986, a hearing would be held on the following items:

A) Whether the Claimant was discharged for just cause, or an action or omission in connection with employment, which was deliberate, willful, or wanton, and adverse to the employer's rightful interest;

B) Whether the Claimant, by reason of his/her

fault, received any sums of benefits to which he/she was not entitled and must repay;

C) Whether the employer is eligible for release of charges.

D) Whether the Claimant, through no fault of her own, received benefits to which she was not entitled (R58).

Unfortunately, the actual hearing did not get to any of these issues, as the Administrative Law Judge decided there was not "good cause" for not filing the timely protest, thus rendering all other issues moot (R55). The Administrative Law Judge, in his formal written ruling, first cited the rule of the Department of Employment Security, regarding relief from charges, which is cited above. He then made the following statement:

In the present case, the employer failed to file a timely request for relief of charges. Not only did he fail to file a written protest within the ten day period, but delayed another twenty-two days. The Notice of Potential Benefit Costs was mailed to the address requested by the employer, and the employer has failed to show that the delay in filing a written request was due to circumstances beyond his control, or due to circumstances which were reasonable and compelling. It is noted, when the employer withdrew his appeal from an audit determination, that he was given another opportunity to request relief of charges, and knew, or should have known, that this request would be forthcoming. Yet the employer failed to act upon the request in a timely manner. It must be held that the employer failed without good cause to file a timely request for relief of charges.

Despite an affidavit stating in more detail the "inadvertence and/or excusable neglect" which resulted in the filing of the late protest (R33-34), the Board of Review upheld the Administrative Law Judge by written decision of April 8,

1986 (R23) without comment.

SUMMARY OF ARGUMENTS

Plaintiff herein claims that it has shown sufficient grounds, pursuant to the Rules of Civil Procedure, and cases construing that rule, to have the judgment against it set aside based on "inadvertence or excusable neglect", and to have its day of court, in the court in which its objects are to be heard. Plaintiff admits the existence of a rule followed by the Department of Employment Security, which appears to give a different standard for setting aside judgments than is promulgated under the Rules of Civil Procedure. To the extent that this rule raises the standard for setting aside judgments, Plaintiff contends that the rule is null and void as a violation of public policy of the State of Utah. Plaintiff also contends that the State of Utah has not entered this case with "clean hands." Because of their continued refusal to communicate with Plaintiff at its correct address, it became necessary to insist that communication be made through Plaintiff's counsel. Unfortunately, in this instance, that extra step appears to have contributed to a communication problem, in which Plaintiff did not provide requested information within the time requested for it. The Department's refusal to admit its own fault in the case, and to grant Plaintiff some additional time because of that fault, amounts

to an arbitrary and capricious denial of Plaintiff's day in Court.

ARGUMENT

RULE A71-07-1:7(111)(C) OF THE RULES AND REGULATIONS OF THE DEPARTMENT OF EMPLOYMENT SECURITY IS INCONSISTENT WITH THE PUBLIC POLICY OF THE STATE OF UTAH REGARDING SETTING ASIDE JUDGMENTS, AND SO IS NULL AND VOID; OR, IN THE ALTERNATIVE, THE INTERPRETATION OF THAT RULE RELIED UPON BY THE ADMINISTRATIVE LAW JUDGE AND THE BOARD OF REVIEW IS UNDULY RESTRICTIVE, AND SO IS NULL AND VOID.

The standard of relief from a judgment in the courts of this State, which is entered as a result of a party's failure to timely plead, is contained in Rule 60(b) of the Utah Rules of Civil Procedure. That rule authorizes a court "upon such terms as are just" to:

Relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . .

Plaintiff, in this matter, testified in front of the Administrative Law Judge that his failure to file objections within ten days, as requested, was due to inadvertence, in that he simply did not see the form that had been sent to him by counsel until after the deadline had passed. As soon as he saw it, he filled it out, and returned it (R54). That testimony was supported by later affidavit, as stated above. The Administrative Law Judge found that "the employer has failed to show that the delay in filing a written request was due to

circumstances beyond his control, or due to circumstances which were reasonable and compelling." Thus, the standard (the Department rule as interpreted) used by the Administrative Law Judge was far from the standard used by the courts, and approved by this Court.

The standard for setting aside judgments in civil proceedings has evolved into a two-pronged test: the first question is whether, from the facts surrounding the failure to timely plead, a showing has been made of inadvertence or excusable neglect such that it would be "just"; and, whether it appears the defaulted party has a meritorious defense. The first part of this test is illustrated in the case of Interstate Excavating v. Agla Development, 611 P.2d 369 (Utah, 1980). The Court therein stated the policy of the law:

The uniformly acknowledged policy of the law is to accord litigants the opportunity for a hearing on the merits, where that can be done without serious injustice to the other party. To that end, the courts are generally indulgent toward the setting aside of default judgments where there is a reasonable justification or excuse for the defendant's failure to appear, and where timely application is made to set it aside. Consistent with the objective just stated, where there is doubt about whether a default should be set aside, the doubt should be resolved in favor of doing so, to the end that each party may have an opportunity to present his side of the controversy, and that there can be a resolution in accordance with law and justice. 611 P.2d at 371.

Even the dissent in that case, while disagreeing about overruling the lower court and setting aside the particular judgment involved, stated:

It is not to be questioned that the policy of the law favors the granting of such relief in the case of a default judgment, and that the remedy should be liberally administered in order to grant the defaulting party his day in court. 611 P.2d at 371-2.

Very simply put, the standard applied by the Administrative Law Judge, as he understood it, and as was upheld by the Board of Review of the Industrial Commission, strongly favors default judgments, and is strongly resistant to their being set aside. To that extent, the rule of the Department, and the application of that rule in this case, is clearly contrary to "the uniformly acknowledged policy of the law." Plaintiff challenges the Department of Employment Security to show any hardship or injustice whatsoever that might possibly result to them if this default judgment were set aside. Plaintiff acknowledges the concurrent line of authority, cited by the dissent in the Interstate Excavating case, to the effect "that such judicial policy remains co-existent with the broad latitude of discretion accorded the trial court in ruling upon such motions." 611 P.2d at 372; see also Mayhew v. Standard Gilsonite Co., 14 Utah 2d 52, 376 P.2d 951 (Utah, 1962). Obviously, that discretion is to be exercised only within the policy of the law. Where the Administrative Law Judge in this matter was laboring under a completely false illusion as to the public policy of this state, his discretion is utterly without basis.

The California Court of Appeals was faced with a similar problem in United States Postal Service v. California

Unemployment Insurance Appeals Board, 63 Cal. App. 3d 506, 134 Cal. Rptr. 19 (Cal. App., 1976). In that case, the U.S. Postal Service had failed to file an appeal of referee's decision within the California Unemployment Insurance System within the ten days required by the department's rules. The postal service, in justification of its late filing, cited internal problems with an overworked legal staff. The Unemployment Insurance Appeal Board for the State of California also relied on a standard of "good cause" to excuse late filings. As in the instant case, the Board had adhered to a restrictive interpretation of "good cause." Referring to the argument of the Appeals Board, the Court stated:

It suggests that the excuse should be disregarded because the error was committed by internal procedures of the postal service in communicating between one branch office and its employed legal staff, and because of its failure to provide adequate legal staff to handle its business.

The Appeals Board points out that the purposes of the act will be frustrated if a determination of the eligibility for benefits is delayed by excusable neglect, as well as procrastination, by the employer. It suggests that to apply other than an arbitrary standard will promote applications for delay, or for relief from tardy filing, by employers. 134 Cal. Rptr. at 24.

The Court went on to comment:

The concept of good cause should not be enshrined in legal formalism; it calls for a factual exposition of a reasonable ground for the sought order. The good cause may be equated to a good reason for a party's failure to perform that specific requirement from which he seeks to be excused. (Citations omitted.) Section 1256 makes it clear that every termination of employment is not accompanied by a right to

unemployment compensation. The employer's interest in avoiding unwarranted liability may not equate with the legislative objective of reducing the hardship of employment. (Citations omitted.) Nevertheless, the case last cited indicates that the legislature did not intend that benefits should be paid when the Claimant was not entitled to them. (Citations omitted.) Here, in fact, the referee found that the claimant was not entitled to benefits. We see no necessity to approve a procedural rule which would facilitate the payment of unwarranted benefits. "Good cause" should be uniformly applied to the parties as the circumstances warrant. Such a rule is not a license for unwarranted delays by the employer. 134 Cal. Rptr. at 24.

Plaintiff acknowledges the recent case of Pacheco vs. Board of Review of Industrial Commission, 717 P.2d 712 (Utah 1986) in which, while disapproving of the restrictive way in which the Board of Review applied its rule, the Court seemed to have approved of the "good cause" standard. Plaintiff submits that there was in that case no challenge to the standard itself. This Court has seemingly upheld a "good cause" standard for other aspects of unemployment insurance, such as whether the employee was discharged for "good cause". See Gibson vs. Board of Review of Industrial Commission, 707 P.2d 675 (Utah 1985). The Court has taken the position that the review of such a standard is a mixed question of law and fact. Plaintiff submits that, on either question of law or fact, it should prevail. The fact remains, however, that the Administrative Law Judge and the Board of Review in the instant case used a standard which is contrary to the policy of the law, as enunciated by this Court, and other courts. This is the appropriate opportunity for this Court to either change the

standard, or to re-interpret it so that similar problems will not continue, causing unnecessary reviews in this Court.

This Court, in State v. Musselman, 667 P.2d 1053 (Utah, 1983), ruled that:

In order for Defendant to be relieved from the default judgment, he must not only show that the judgment was entered against him through excusable neglect (or any other reason specified in Rule 60[b]), but he must also show that his motion to set aside the judgment was timely, and that he has a meritorious defense to the action. 667 P.2d at 1055-6.

Plaintiff's motion to the Administrative Law Judge was clearly timely. As stated above, it was with adequate cause under the law. The last question, therefore, is whether Plaintiff shows a meritorious defense. The Claimant for unemployment benefits claims that she was unjustly terminated from employment, because she would not fill in for someone else on their day off (R64). Plaintiff's objection shows a completely different view, and makes charges which obviously should have been gone into by the Department, before deciding whether to give the Claimant unemployment insurance. Plaintiff stated in its reply:

Dismissed for prostitution believed to be going on; also because of the illegal use of drugs and not being able to stay awake at work. Also, she has been employed at Anatomy & Us from the 1st day of July until the first part of October (R62).

Obviously, this meets the test enunciated in the Musselman case. Plaintiff claims that the employee was discharged for prostitution activities, and for drug use which affected her job performance. Plaintiff also claims that the former

employee was immediately employed by a rival massage establishment, thus making her ineligible for benefits and likely the perpetrator of a fraud upon the State of Utah. The failure of the Administrative Law Judge, and the Board of Review, to at least give Plaintiff its day to show the truth of these allegations, is astonishing.

In the instant case, the employer admits that his problem in communicating with his attorney was an internal one. The Court is reminded that the State has already had its mistake, in sending papers to the wrong address, a problem that has been repeated between this employer and the Department on several occasions, despite repeated requests to correct the address. Plaintiff submits that the mistakes of the employer were, in part, caused by the mistakes of the Department. As in the California case, strict adherence to an arbitrary standard is likely to cause a substantial risk of someone receiving benefits to which they are not entitled. The Utah legislature no more intended that result than did the California legislature.

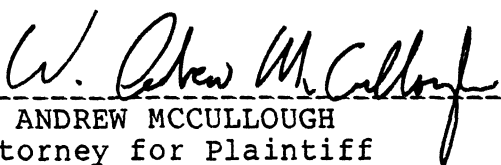
Therefore, Plaintiff asks the Court to find, in the alternative, that the standard promulgated by the rule in question is void as a matter of public policy, or that the restrictive interpretation exercised by the Administrative Law Judge and the Board of Appeals is in error, and should be overruled.

CONCLUSION

Plaintiff requests this Court either to find that the standard of "good cause" employed by the Department of Employment Security in determining whether to set aside judgments or consider late objections, is invalid as contrary to the public policy of this state; or that the interpretation of the rule by the Administrative Law Judge, and affirmed by the Board of Review, is erroneous, thus subjecting Plaintiff to a higher standard than is appropriate in order to obtain its day in court. Plaintiff therefore requests the Court to reverse the ruling of the Board of Review, and order a hearing on the merits of Plaintiff's claims. In the alternative, Plaintiff requests that this Court instruct the Board of Review as to the appropriate standard to use in determining such questions, and remand for further proceedings consistent with those instructions.

RESPECTFULLY SUBMITTED this 17th day of July, 1986.

MCCULLOUGH, JONES, JENSEN & IVINS



W. ANDREW MCCULLOUGH
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of July, 1986, I did mail four true and correct copies of the above and foregoing Brief of Petitioner, postage prepaid, to the Department of Employment Security, P.O. Box 11600, Salt Lake

City, Utah 84147.

W. Owen M. Colby

ADDENDUM

BOARD OF REVIEW
The Industrial Commission of Utah
Unemployment Compensation Appeals

SMH/SG/WMF/cd

KATHRYN F. PREECE
S.S.A. No. 529 84 6739

vs.

DEPARTMENT OF EMPLOYMENT SECURITY

:
:
Case No. 86-A-770-C
:
DÉCISION
:
Case No. 86-BR-104-C
:

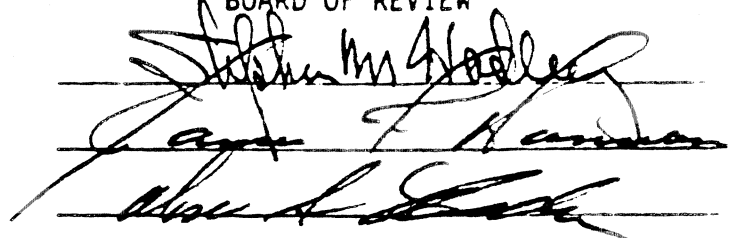
After careful consideration of the record and testimony in the above-entitled matter, the Board of Review finds the decision of the Administrative Law Judge to be fair and unbiased and supported by competent evidence and, therefore, affirms such decision holding the employer, Mini Spas, Inc., liable for benefit charges in connection with this claim, pursuant to §35-4-7(c)(3)(F) of the Utah Employment Security Act. In so holding, the Board of Review hereby adopts the findings of fact and conclusion of law of the decision of the Administrative Law Judge.

This decision will become final ten days after the date of mailing hereof, and any further appeal must be made directly with the Utah Supreme Court at the State Capitol Building, Salt Lake City, Utah, within ten days after this decision becomes final. To file an appeal with the Supreme Court, you must submit to the Clerk of the Court a Petition for Writ of Review setting forth the reasons for appeal, pursuant to §35-4-10(i) of the Utah Employment Security Act, followed by a Docketing Statement and a Legal Brief.

Dated this 8th day of April, 1986.

Date Mailed: April 11, 1986.

BOARD OF REVIEW



0005

7 INDUSTRIAL COMMISSION OF UTAH
DEPARTMENT OF EMPLOYMENT SECURITY

Appeals Tribunal

Decision of Administrative Law Judge

Kathryn F. Preece	:	S.S.A. No. 529 84 6739
1056 Wood Ave.	:	
Salt Lake City, Utah 84105	:	Case No. 86-A-770

Mini Spa's Inc. (Appellant)
c/o W. Andrew McCullough
Attorney At Law
930 South State, Suite 10
Orem, Utah 84058

APPEAL FILED: February 4, 1986

DATE OF HEARING: March 3, 1986

APPEARANCES: Claimant/Employer/
Employer's Attorney

PLACE OF HEARING: Salt Lake City
Telephone

The Department's decision dated January 28, 1986 held the employer liable for benefit costs in connection with the claim in accordance with the provisions of Section 35-4-7(c)(3)(F) of the Utah Employment Security Act. This decision was based on the grounds that the employer failed to submit a timely request for relief of charges and did not show good cause for the late response. Section 35-4-7(c)(3)(F) of the Utah Employment Security Act is quoted on the attached sheet.

FINDINGS OF FACT:

On December 9, 1985, the employer withdrew an appeal from an audit determination dated May 29, 1984 which held the claimant, Kathryn F. Preece, performed services "in employment". The employer withdrew their appeal with the understanding they would have an opportunity to contest benefits paid to the claimant and request relief of charges for said benefits.

As a result of the employer's withdrawal, the Department sent Form 607, Employer Notice of claim Filed and Potential Benefit Costs, to the employer. This was sent to the employer on December 18, 1985 and as requested by the employer it was sent to the employer's attorney, W. Andrew McCullough, at 930 South State Street, Number 10, Orem, Utah 84058. This notice advised the employer potential benefit costs in the amount of \$3,832.21 and stated "this is an official notice that your pro-rated share of any benefits paid to this claimant will be included in the determination of your benefit ratio tax rate for Calendar years beginning in 1985, unless you respond within ten days. Relief cannot be granted unless your request is submitted in writing by December 28, 1985. You will be notified of the Department's decision with regard to any request".

The employer did not file a request in writing until January 20, 1986. They state the delay may have been due to the fact the notice had to be forwarded from the attorney to the employer. However, the employer testified he had the Notice of Potential Benefit Costs for as long as ten days before acting on it.

The employer reports the claimant has been working while drawing unemployment benefits. The Department's Benefit Payment Control Unit is presently looking into this matter.

REASONING AND CONCLUSION OF LAW:

Rule A71-07-1:7(111)(C) of the Rules and Regulations of the Department of Employment Security states:

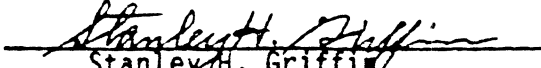
"All base period employers and all employers for which a claimant worked after the base period, but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed. All employees who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges. All such protests and requests must be made in writing to the Department within ten days after the notice is issued and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer. If the basis for the request of relief of charges would have justified such relief, but the employer fails to provide separation information within the time limits of the request or make a timely protest, such charges may not be considered erroneous charges from which the employer can later be relieved. An exception may be allowed for an untimely protest upon a showing of good cause. Good cause for failing to file a timely protest will be established in accordance with guidelines for late filing of other appeals".

In the present case, the employer failed to file a timely request for relief of charges. Not only did he fail to file a written protest within the ten day period, but delayed another twenty-two days. The Notice of Potential Benefit Costs was mailed to the address requested by the employer and the employer has failed to show that the delay in filing a written request was due to circumstances beyond his control or due to circumstances which were reasonable and compelling. It is noted when the employer withdrew his appeal from an audit determination, he was given another opportunity to request relief of charges and knew or should have known that this request would be forthcoming. Yet the employer failed to act upon the request in a timely manner. It must be held that the employer failed without good cause to file a timely request for relief of charges.

In the event the Department finds as a result of their investigation that the claimant has received benefits to which she was not entitled and establishes an overpayment, the employer will be relieved of benefit costs associated with those benefits.

DECISION:

The decision of the Department Representative which held the employer liable for their pro-rated share of benefits paid to Kathryn F. Preece in accordance with the provisions of Section 35-4-7(c)(3)(F) of the Utah Employment Security Act is herewith affirmed.


Stanley H. Griffin
Administrative Law Judge
DEPARTMENT OF EMPLOYMENT SECURITY

This decision will become final unless within ten days from March 6, 1986, further written appeal is made to the Board of Review (P. O. Box 11600, Salt Lake City, Utah 84147) setting forth the grounds upon which the appeal is made.

ch
Attachment
cc: BPC

EMPLOYER NOTICE OF CLAIM FILE
POTENTIAL BENEFIT COSTS

JNO

Utah Department of
Employment SecurityCLAIMANT *V. P. P. reoc*DATE *Jan 28 1986*BASE PERIOD *07-01-81 to 06-30-85*SOC SEC # *1 14 1 19*LIT # *11*BASE PERIOD WAGES
FROM THIS EMPLOYEREMPLOYER ACCT # *7-088646-1*Qtr 3/84 *3496*Qtr 4/84 *3362*Qtr 1/85 *4150*Qtr 2/85 *3324*TOTAL *\$14282**Andrew McCallough*
930 South State ST #10
Orem Utah 84058~~NEW CHG~~ *(8)*FROM ALL
EMPLOYERS *\$14282*

JAN 22 1986

402
*Page 1*POTENTIAL BENEFIT COSTS
FOR THIS EMPLOYER *\$ 3832.21*FOR ALL EMPLOYERS *\$ 3875.00*

The above named claimant has filed a claim for unemployment insurance benefits and reports you were his/her employer during the base period shown.

THE CLAIMANT REPORTS THE REASON FOR SEPARATION AS FIRED

This is an official notice that your pro rata share of any benefits paid to this claimant will be included in the determination of your benefit ratio tax rate for calendar years beginning in 1985, unless you respond within ten (10) days. Relief of these charges may be granted under conditions as outlined on the reverse side of this form. If you do not respond, the charges will stand. If you wish to contest the charges and there is no need to respond. You may also protest that the claimant does not meet other eligibility requirements.

If you feel you qualify for relief of charges, your request for relief is discharged, give causes for your action.) Missing, incomplete, or incorrect rate and/or improper payment of benefits.

GIVE
TO THE
MARCH OF DIMES

ACTION REQUESTED BY EMPLOYER: (Please check appropriate box)

☐ Relief of charges to benefit ratio tax rate, (please furnish factual separation information)☒ Review of claimant's eligibility, based on the information provided below☐ Correction of charges.☐ Claimant not employed by this firm, (please provide correct employer if known).☐ Base period earnings are incorrect. A correct quarterly breakdown of wages is provided below.

Please indicate if claimant worked *4/30/85* *Assumed for investigation was believed to be young or also because of the illegal use of charges and not being able to stay private at work. Also she has been employed at instance & has from the 1st day of July until the first part of October.*

EXHIBIT

If additional space is needed, attach a letter. You may attach any documentation you wish to be considered.

Relief can NOT be granted unless your request is submitted in writing by *12-28-85* di
You will be notified of the Department's decision with regard to any request.

466-9442
Telephone Number*1-20-86*
Date Mailed

(Section 26-4-198) of the Utah Employment Security Act

Gusty J. Hanna
Signature

0062

Proc. Sec. Min.
Title

88888

1 W.ANDREW MCCULLOUGH
2 MCCULLOUGH, JONES, JENSEN & IVINS
3 Attorneys for Employer
4 930 South State Street, Suite 10
5 Orem, Utah 84058
6 Telephone: 224-2119

7 IN THE UTAH DEPARTMENT OF EMPLOYMENT SECURITY
8 INDUSTRIAL COMMISSION OF UTAH

9 ---oooOooo---

10 In re KATHRYN F. PREECE : AFFIDAVIT
11 :
12 : Case No. 86-BR-104-C

13 ---oooOooo---

14 STATE OF UTAH)
15 *Salt Lake* ss.
16 COUNTY OF ~~UTAH~~)

17 RUSTY J. HANNA, being first duly sworn, deposes and says:

18 1. That he is the president and the general manager of Mini
19 Spas, Inc.

20 2. That, sometime in December of 1985, a form 607, Employer
21 Notice of Claim Filed and Potential Benefit Costs, was received by
22 his office, from his attorney, W. Andrew McCullough.

23 3. That he was unaware of any such Notice until January,
24 1986, after the period of time for requesting to file that form
25 had expired.

26 4. That he only became aware of the existence of that
document when his attorney asked him whether he had sent it in.

5. That, upon the reminder of his attorney, he searched and
found the document, which he had not previously seen, and filed it

1
2 promptly.

3 6. That he believes he has good cause to object to the
4 granting of benefits to Claimant herein, as he has good reason to
5 believe that Claimant, while on the premises of Mini Spas, Inc.,
6 and while employed in the service of Mini Spas, Inc., engaged in
7 drug trafficking and acts of prostitution.

8 7. That he also has good reason to believe that, after
9 being separated from employment with this Employer, Claimant went
10 to work for Anatomy and Us Health Studio, located on South Main
11 Street in South Salt Lake, Utah, and was fully employed there,
12 although not on the records of that establishment, due to an
13 illegal agreement between Claimant and Anatomy and Us that she
14 would not be counted as an employee so that she could continue to
15 receive unemployment insurance.

16 8. That he has adequate evidence of the above allegations,
17 and attempted to provide that information to the Administrative Law
18 Judge without success.

19 9. That he believes his failure to file the papers within
20 the ten day period requested by this Department was through no
21 fault of his own, and was excusable neglect, within the terms of
22 the law.

23 DATED this 22 day of March, 1986.

24
25 
26 Rusty J. Hanna

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Subscribed and Sworn before me this 22nd day of March, 1986.

W. Owen McCallough
Notary Public

My Commission Expires: 11/27/87
Residing at: Orem, Ut