

2001

Vito Diprizio v. Industrial Commission of the State of Utah-Board of Review : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

* * * *

VITO DIPRIZIO,

Plaintiff,

:

vs.

:

Case No. 14698

INDUSTRIAL COMMISSION OF THE
STATE OF UTAH--BOARD OF REVIEW,

:

Defendant.

:

* * * *

ACTION FOR REVIEW OF
FINAL ORDER OF INDUSTRIAL COMMISSION

* * * *

BRIEF OF PLAINTIFF, VITO DIPRIZIO

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FILED

NOV 22 1976

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STATEMENT OF THE CASE

This is an action to review a final order of the Industrial Commission of Utah--Board of Review denying Plaintiff benefits for a period of fifty-two weeks and assessing the Plaintiff with the liability to repay \$1,217.00 received by Plaintiff during such period of disqualification, and declaring him ineligible to receive future benefits until full repayment is made by Plaintiff to the Department of Employment Security.

DISPOSITION BELOW

Plaintiff submitted a signed statement regarding his claims for benefits on January 7, 1976. He was served with a notice of hearing and appeared before a Hearings Representative on February 17, 1976. The decision on Plaintiff's future rights to Unemployment benefits was rendered March 2, 1976. Plaintiff appealed to the Appeal Referee and a hearing was held April 14, 1976. From a decision affirming the prior decision, Plaintiff appealed to the Board of Review, wherein the prior decisions were affirmed in an opinion rendered June 30, 1976. This appeal is taken from that final decision of the Board of Review of the Industrial Commission for the State of Utah.

RELIEF SOUGHT

Plaintiff filed this Writ of Review seeking reversal of the Order of the Commission and a ruling and determination by this Court that Plaintiff shall be eligible to receive future benefits during such times as he may be

unemployed and eligible to receive benefits; that Plaintiff shall be declared not ineligible to receive benefits for the period beginning May 31, 1975, for fifty-two weeks thereafter; and that the decision assessing a liability for overpayment in the amount of \$1,217.00 be reversed and otherwise set aside.

STATEMENT OF FACTS

Plaintiff was employed as a carpenter during all times material to this appeal. He is a member of the Carpenter's Union, Local 184, and was sent out on jobs through the union as work became available. During the four calendar quarters beginning with the fourth quarter of 1974, Plaintiff was employed by 7 different employers for a total of 22 weeks. Plaintiff was mailed Form 605, Notice of Monetary Determination on January 5, 1976, and was determined eligible for benefits. (Appendix page 1.)

Plaintiff was requested to submit a Statement Regarding Claim for Benefits, Form 615-C. (R. 21) It does appear that this form was completed by a representative of the Department of Employment Security, and signed by the Plaintiff. It was noted thereon that "the claimant speaks broken English and seems confused about Unemployment Insurance in general." (R. 21) The scope of that inquiry was apparently limited to a question of whether plaintiff was employed on May 30, 1975. Plaintiff was earning \$7.61 per hour at that time. He stated that he could have earned about \$55.00 per day during that period of time. He further stated that if he had worked on that day, that he did not know why it could have gone unreported on his claim for benefits for that week.

On February 10, 1976, plaintiff was mailed a notice to attend a hearing on February, 17, 1976, in order to determine whether he had violated provisions of Section 35-4-5 (e) U.C.A. 1953. (R. 18) The decision of the Hearings Representative rendered March 2, 1976, concluded that plaintiff had failed to report working on May 30, 1976, and did further conclude that plaintiff's conduct constituted a knowing withholding of a material fact. As a consequence plaintiff was disqualified from receiving benefits for the 52 week period beginning with the week ending May 31, 1975. As a consequence of the disqualification, the benefits paid to plaintiff during various periods of unemployment after that date, and prior to the date of hearings, were "overpayments", and plaintiff was determined to be liable for the immediate repayment of those amounts.

At that hearing plaintiff contended that he did not withhold material information in order to receive benefits.

On April 14, 1976, plaintiff appeared before the Appeals Referee and testified again concerning the date of employment. He was examined by the Referee. The transcript made therefrom appears at the Record, p. 11-15. The line of questioning by the Referee was essentially similar to that of the Hearings Representative.

It was established that plaintiff had begun work for the McKee Construction Company on May 30, 1975, and that he was laid off due to reduction in force on July 1, 1975, and that he thereafter made additional claims for benefits. Plaintiff again denied wilfully failing to report the fact of being employed for the one day, and for being entitled to receive the amount of \$5,310.20 gross for

reported that amount, even though he had not yet been paid.

It appears that the inquiry described hereinabove was based upon inquiry of the Department of Employment Security to McKee Construction dated November 20, 1975.

(R. 22) Reference is made throughout the findings of the Agency representatives to information "subsequently developed" that plaintiff may have worked for one day which was not reported. It also appears that no other notice was forwarded to plaintiff concerning the inquiry of McKee.

In spite of the fact that plaintiff has consistently denied a wilful and knowing withholding of information, and stated that he had made a mistake on his claim card for the week in question, the decisions were adverse to him. It appears that some considerable weight was placed on the fact that he had received the "handbook" from the Department, and that on at least two prior occasions involving partial benefit weeks, the plaintiff had correctly filled out his claim cards.

It was observed by the Referee that the finding of overpayment results in a very severe penalty, but was of the opinion that the statute does not vest any discretion in the Department of Employment Security to compromise any portion of such a claim.

The summary of weekly benefits received by Plaintiff herein is included in the Record as page 8, and set forth herein as Appendix page 2. The question is raised thereunder of the correctness of the calculation of the amounts allegedly due from plaintiff to the Department of Employment Security.

POINT I: THE DECISION OF THE INDUSTRIAL COMMISSION TO DENY BENEFITS BASED UPON RETROACTIVE DISQUALIFICATION OF PLAINTIFF AND TO THEREBY REQUIRE REPAYMENT OF AMOUNTS RECEIVED IS CONTRARY TO THE PURPOSES OF THE UNEMPLOYMENT COMPENSATION LAWS AND AGAINST PUBLIC POLICY AND AMOUNTS TO A DENIAL OF PLAINTIFF'S RIGHTS TO DUE PROCESS OF LAW

This appeal presents the issue as to the proper interpretation and application of Utah Statutes regarding Unemployment Compensation pursuant to Chapter 4, Title 35, Utah Code Annotated 1953, and specifically examines the application of 35-4-5 (e) and 35-4-6 (d) and (e) to the facts of this case.

It has long been established that public policy underlying Unemployment Compensation is as follows:

Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. ... subject requiring action by legislature to prevent its spread and to lighten the burden upon the unemployed worker.... social security requires protection against this greatest hazard of our economic life. ... the public good, and the general welfare ...require ..free public employment offices and for.. compulsory setting aside of unemployment reserves to be used for the benefit of unemployed persons." 1/

1. Utah Code Annotated 35-4-2

This principle was recently reaffirmed in the case of California Department of Human Resources Development vs. Java. 2/ The Supreme Court of the United States held that the congressional objective in enacting Sec.301-303 of the Social Security Act (42 USC Sec 501-503) was to provide for wages lost during a period of unemployment not the employee's fault. 3/ The Java decision contains a cogent analysis of the purposes and objectives of the Unemployment Compensation system, and emphasizes the close interrelationship between the States and the Federal Government in funding the benefits available for unemployed workers.

The Supreme Court of California recently construed the statute of that State allowing the state to recover an overpayment of unemployment benefits in the light of the Java decision. 4/ The California Court held that the statute providing that any person overpaid unemployment benefits is liable for the amount overpaid unless the overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience, does not permit recoupment of overpayment on sole ground that recipient had been notified of possibility of liability but also requires consideration of the nature and cause of the overpayment, the hardship to the recipient that repayment may

2. 402 U.S. 121, 28 L. Ed. 2d 666, 91 S. Ct. 1347 (1971)

3. Ibid, at page 130 of 402 U.S. Reports

4. Gilles vs. Department of Human Resources Development
113 Cal. Rptr. 374, 521 P. 2d 110, (1974)

impose, and the effect, if any, that repayment would have upon the fulfillment of the objectives of the unemployment compensation laws, and further holding that the statute permitting collection of overpayments by setoff against future unemployment benefits does not conflict with the Social Security Act. In Gilles the issue involved whether employee discharged for alleged misconduct, and having been found initially eligible, was entitled to receive benefits pending determination of appeal by employers, and whether, in event of adverse determination of eligibility on appeal, were required to repay amounts received as overpayments. 5/

The Court found support in federal court decisions construing section 204 of the Social Security Act (42 USC Sec. 404), which prohibits recovery of overpayments from "any person who is without fault if such adjustment or recovery would defeat the purpose of this subchapter or would be against equity and good conscience." 6/ It is clear that the federal decisions require that there be taken into account the origin of the overpayment, the extent to which the recipient changes his position in reliance on the receipt of benefits, and the impact of recoupment upon the recipient's current financial position.

5. Ibid, 521 P. 2d at page 115.

6. Ibid, 521 P. 2d at page 117, and cases and decisions cited.

In Gilles, supra, it is expressly stated"that the provisions of the Unemployment Insurance Code must be liberally construed to further the legislative objectives." 7/ And the Court cites with approval language from Java, supra regarding the objectives of Unemployment benefits, which include providing cash to a newly unemployed worker at a time when otherwise he would have nothing to spend, serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity, and emphasizing that the early payment of insurance benefits serves to prevent a decline in the purchasing power of the unemployed, which in turn serves to aid industries producing goods and services. 8/

In the case at bar, a careful review of the record reveals that plaintiff herein was apparently confused and unsure of his obligations under the reporting requirements, and consistently denied making false statements or intentional omissions for purposes of gaining benefits to which he was not entitled. It further appears that plaintiff was not given notice that he could be required to make full repayment of amounts received subsequent to May 31, 1975, to date, at the initial interview on January 7, 1976. It appears that his sole reason to seek benefits was due to the nature of his employment, something which is common to many members of trade unions employed in the construction industry, namely,

7. Ibid, at 521 P. 2d at page 118.

8. Ibid.

periods of regular employment for several weeks or months, usually terminating for periods of several weeks due to a reduction in force or temporary layoffs, before again finding regular employment. There is no question that plaintiff was in fact unemployed during each of the weeks subsequent to May 31, 1975, when he applied for benefits; and it is equally clear that plaintiff was unaware of any reason why those benefits could be later determined to have been "overpaid."

It is submitted that any overpayments allegedly received by plaintiff were received "without fault" as defined and within the meaning of 35-4-6(e) and it is further submitted that plaintiff was entirely without fault in requesting benefits and is otherwise entitled to same, without liability for repayment of any kind. Plaintiff's unemployment was clearly due to no fault of his own.

A recent decision by the Commonwealth Court of Pennsylvania held a statute of that state, which is similar to the Utah Statute allowing recoupment of overpayments, to violate the 14th Amendment of the United States Constitution and to violate the equal protection clause, as applied in that case. 9/ The facts are similar, in that the claimant was initially found eligible for benefits, but that information subsequently developed from the employer revealed that claimant had apparently voluntarily left work. Upon discovery of the error, the liability for overpayment was assessed seeking recovery of benefits previously paid. That Court also cites with approval

9. Unemployment Compensation Board of Review vs. Selby,
Pa. Cmwlth., 300 A.2d 234 (1973)

the public policy considerations enunciated in Java, supra, and Gilles, supra.

Plaintiff respectfully submits that the interpretation by the Industrial Commission, through its various hearing representatives, referees, and the Board of Review, of 35-4-5 U.C.A. 1953, as evidenced by its procedures, and by its decisions in this case, offend the Constitutional and statutory principles hereinabove set forth.

The determination that plaintiff is ineligible for any future benefits until the sum of \$1,217.00 is repaid, and is further subject to collection through civil process in the same manner as any other judgment debtor, is erroneous, and should be set aside by this court.

POINT II: THE DECISION OF THE INDUSTRIAL COMMISSION IS NOT SUPPORTED BY COMPETENT SUBSTANTIAL EVIDENCE AND IS ARBITRARY AND CAPRICIOUS

The record in this matter is clear that plaintiff has a great deal of difficulty with the English language. It further appears that there was a considerable delay in the notice given plaintiff that the Department of Employment Security was seeking recoupment of a substantial sum from plaintiff. The hearings were investigated, adjudicated, and reviewed by a single agency. It has been held that in at least some instances this amounts to a denial of due process of law; where there is a power to discipline and a power to investigate, a medical board did not qualify as an

Although the Department of Employment Security concedes that the consequences of disqualification are harsh and severe, it is contended that the statute allows no discretion. It is submitted that the provisions of the statute allow for such discretion, and that fundamental fairness required by law is violated in not resolving contested questions raised by the evidence in favor of the plaintiff. If, in fact, the disqualification is result of the failure to understand the duties imposed by law on the part of the plaintiff, the result becomes harsh indeed.

There is precedent that cruel and unusual penalties are a violation of the Constitution of the United States 11/ and apply as well to "civil" penalties as to those imposed through the criminal statutes. There can be no dispute that the application of the fraud provisions of the Utah Unemployment Compensation statute is in the nature of a penalty. The penalty may not be justified in terms of public policy due to the adverse impact on the plaintiff financially, causing great hardship. Nor may it be justified due to the apparent unjust enrichment ~~that~~ derives in favor of the State.

11. U.S. Const. Amend. VIII; Trop v. Dulles 356 U.S. 86 (1948)
CONCLUSION 64 Harv. L. Rev. 271(1950)

Plaintiff respectfully submits that the decision rendered by the Board of Review is erroneous and should be reversed and otherwise set aside, and that plaintiff be declared eligible to receive future benefits, if qualified and eligible, and that the requirement for repayment of "over-payment" be set aside.

APPENDIX

UTAH DEPT. OF EMPLOYMENT SECURITY

322 40 012 12-14-75 SALT LAKE 1-15-76
 SSA NO EFFECTIVE DATE LOCAL OFFICE DATE PROCESSED & MAILED

YOUR WAGES BY EMPLOYER BY CALENDAR QUARTER IN YOUR BASE PERIOD							
QTR	WEEKS	WAGES	EMPLOYER	QTR	WEEKS	WAGES	EMPLOYER
4 74	01	491.20	IOWA CONST	4 74	02	262.96	WYLER CONST
1 75	03	471.50	OKLAND CONST	2 75	04	1,234.40	ARTHUR HICKS &
3 75	05	2,344.51	CANNON CONST	3 75	02	135.10	JACOBSON CONST
3 75	02	470.00	CHRISTIANSEN				

(SEE REVERSE SIDE)

RECEIVED
 12-18-75
 SALT LAKE CITY UT 84101

TOTAL WAGES	HIGH QTR. WAGES	WEEKS	MAXIMUM BENEFITS	WEEKLY AMOUNT
5,431.43	2,251.27	14	1,414	101
OR YOU DO NOT QUALIFY BECAUSE _____				

NOTICE OF MONETARY DETERMINATION - FORM 605, REV. 1-1-66

UTAH DEPARTMENT OF EMPLOYMENT SECURITY

The other side of this form shows the weekly amount and the maximum amount which you may be entitled to receive. These amounts are based on earnings from the employers you reported to us. Your benefits can be based on employment with private industry covered by State law, military service, or Federal civilian employment during the four calendar quarters prior to effective date of your claim.

Unemployment benefits are payable only if you qualify each week. You will not receive a waiting week credit or benefit checks for any weeks for which you are disqualified within the law. You will receive a separate notification of any disqualification assessed.

This money is available to you within the 52 weeks following the effective date of your claim.

Refer to your "Handbook for Claimants" and "Benefit Schedule" for further explanation of the law, your responsibilities, and how your benefit amount was determined.

In the event you do not qualify, the reason is shown. It is possible you might qualify at the beginning of the next calendar quarter. Contact your local office if you have a question.

If you do not agree with this determination of your benefit rights, you may file a protest through the Employment Security Office at which you filed your claim. Any such protest must be made within 10 days from the date on which this notice was processed and mailed to you. Bring this determination with you.

CLAIMANT'S RIGHTS TO REQUEST RECONSIDERATION OF INFORMATION FURNISHED BY FEDERAL AGENCIES

Information as to whether you performed Federal service, the amount of your Federal wages, the period of your Federal services and the reason for separation from Federal service are furnished by the Federal agency for whom you worked.

If you believe the information furnished is not correct or you want more information about any of the items, you have the right to request additional information or reconsideration.

Any such request, with supporting data, should be made through the Employment Security Office at which your claim was filed within ten days from the date this notice is mailed to you.

04/19/76

CLAIMANT RECORD TRANSCRIPT

SM

322 46 8015 12 15 74 93 2325 21 1
VITO DIPRIZIO 12 13 75 18 1
P O BOX 691 1511 860381026 39 2784 8156
SALT LAKE CY UT 84101 1 5E 05 25 75 05 22 76 1 1217
11 23 75 12 21 74 12 06 75

12 27 74 12 19 74
000000 01 06 5 12 21 WW 48
000000 01 06 5 12 28 EE 99
922650 01 07 5 01 04 93
077710 01 14 5 01 11 93
098870 01 22 5 01 18 93
117538 01 30 5 01 25 93
127031 02 04 5 02 01 93
152588 02 13 5 02 08 93
166036 02 19 5 02 15 93
185129 02 25 5 02 22 93
209081 03 04 5 03 01 93
226261 03 10 5 03 08 93
248822 03 17 5 03 15 93
294966 04 01 5 03 29 80 25
314448 04 08 5 04 05 93
332891 04 14 5 04 12 93
352326 04 21 5 04 19 93

EX EA WE 5 3
410815 05 12 5 05 10 93
436732 05 20 5 05 17 93
450135 05 27 5 05 24 93
467546 06 02 5 05 31 93

ROR
571128 07 10 5 07 05 45 60
EX EA FOR WE 7 19
623579 07 29 5 07 26 93
651147 08 06 5 08 02 93

SL 11 23 5 SEP
ISS
REM STP NO 5B1
NOT SUITED

939585 12 02 5 11 29 93
961465 12 10 5 12 06 93

5E 5 25 5-5 22 6
OP \$1217 AR
76-r-233

UI = 154 FED =

~?

13.00
417.00
702.00
1217.00

4-16