

1989

Stacy Neil v. Board of Review of the Industrial Commission of Utah, Department of Employment Security : Brief of Petitioner

Utah Court of Appeals

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BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 890112-CA

STACY NEIL

Claimant-Petitioner,

PETITION FOR REVIEW

v.

BOARD OF REVIEW OF THE INDUSTRIAL
COMMISSION OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY, and SAFETY
FIRST FLAGGING.

BRIEF
OF THE
PETITIONER

Case No. 890112-CA

Appeal from the Board of Review, The Industrial Commission of Utah,
Department of Employment Security, Stephen M. Hadley, Chairman, John
Florez, Thomas R. Carlson, Don Belka, James F. Hannan, Darcie H. White.

WINSTON M. FAUX #1049

STACY NEIL

Attorney for Respondent

Board of Review of the Industrial
Commission of Utah, Department of
Employment Security

890112-CA
JUL 10 1989

- 35-4-6(c)** The claimant or any other party entitled to notice of a determination as herein provided may file an appeal from such determination with an Administrative Law Judge within ten days after the date of mailing of the notice to his last-known address. . . . Department Regulations allow for consideration of good cause for the late filing of an appeal.
- 35-4-6(d)** . . . If any person, by reason of his own fault, has received any sum as benefits under this Act to which under a redetermination or decision pursuant to this section, he has been found not entitled, he shall be liable to repay such sum, and/or shall, in the discretion of the commission, be liable to have such sum deducted from any future benefits payable to him
- 35-4-6(e)** If any person has received any sum as benefits under this Act to which under a redetermination or decision he was not entitled, and it has been found that he was without fault in the matter, he is not liable to repay such sum but shall be liable to have such sum deducted from any future benefits payable to him with respect to the benefit year current at the time of such receipt.
- 35-4-22(m)** "Unemployment." (1) An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount
- 35-4-7(c)(3)**
- (C) On or after January 1, 1985, an employer's basic tax rate will be . . . the total benefit costs charged back to an employer during the immediately preceding four fiscal years . . . divided by the total taxable wages of the employer for the same period
- (D) Benefit costs of former workers of an employer will be charged in the same proportion as the wages paid by that employer in the base period bear to the total wages of all employers of that worker in the base period, calculated to the nearest five decimal places.
- (E) . . . Any employing unit that receives a notice of the filing of a claim may protest payment of benefits to former employees or charges to the employer if the protest is filed within ten days after the date the notice is issued.
- (F)(1) Benefit costs of an individual will not be charged if (a) the individual was discharged by the employer or voluntarily quit employment with the employer for disqualifying reasons, but subsequently requalified for benefits and actually received benefits; (b) the individual received benefits following a quit which was not attributable to the employer; or (c) the individual received benefits following a discharge for non-performance due to medical reasons.

The Rules and Regulations pertaining to Section 35-4-7(c) provide:

- D 1** Under the following circumstances a written request is required for relief of charges: a. Separation Issues
- (1) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one reason for separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.
- (a) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Section 35-4-5(a) of the Act.
- (b) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances **not** caused or aggravated by the employer. For example, if the claimant quit because of a personal circumstance which was not the result of his employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would **not** be relieved of charges.
- (c) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.
- (d) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.
- (e) The claimant quit work for that employer for personally compelling circumstances not within the employer's power to control or prevent.
- (f) The claimant was discharged from the employer for circumstances which would have resulted in a denial of benefits under Section 35-4-5(b) of the Act.
- (g) The claimant was discharged for non-performance due to medical reasons. Although the medical problem may have been caused or aggravated by the employment, the employer is eligible for relief.

THE INDUSTRIAL COMMISSION OF UTAH
Department of Employment Security

APPEALS SECTION

DECISION OF ADMINISTRATIVE LAW JUDGE

Stacy Neil : S.S.A. No. 529 19 4232
529 East 4400 South :
Ogden, Utah 84403 : Case No. 88-A-05339

DECISION DATE: October 5, 1988 DATE OF HEARING: December 20, 1988

APPEAL DATE: November 29, 1988 PLACE OF HEARING: Ogden, Utah

ISSUES: Sections 35-4-6(c) & 35-4-5(a)

EFFECTIVE DATE OF DENIAL: September 18, 1988

FINDINGS OF FACT:

The Department's decision was mailed to the party's full and correct address of record. Consistent with the time limitation prescribed by Section 35-4-6(c), quoted on the attached sheet, the decision contained instructions for filing an appeal.

The appeal was filed beyond the time limitation imposed by the statute, as it was not filed within ten days from the date of denial (13 days if decision mailed).

The claimant had several prospects of employment and did not feel she would need to collect unemployment insurance benefits. She feared the employer might retaliate and give her a bad job reference if she contested her eligibility to receive unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

The Utah Department of Employment Security Unemployment Insurance Rules for Section 35-4-6(c) state:

H. A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

1. The appeal was filed within ten days of actual receipt of the decision if such receipt was beyond the original appeal period;

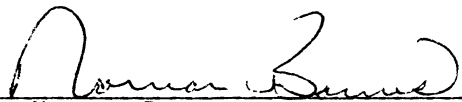
2. The delay in filing the appeal was due to circumstances beyond the control of the appellant; or

3. The appellant delayed filing the appeal for circumstances which were compelling and reasonable.

The appellant was not prevented from making the appeal during the period in question. Therefore, it is held the appellant has not shown good cause for failing to file the appeal on time. There is no evidence of a mistake as to the facts which would justify exercising continuing jurisdiction. Section 35-4-6 (c) is a statute of limitations governing the jurisdiction of the Appeals Tribunal. The effect and purpose of the section is to limit the Tribunal to consideration of those matters which are brought before it by timely appeals of interested parties.

DECISION:

It is concluded that the appeal was not a timely one within the requirements of Section 35-4-6(c) of the Utah Employment Security Act or the rules pertaining thereto. The Administrative Law Judge, therefore, lacks jurisdiction for further consideration of the matter and the decision appealed is still in effect.


Norman Barnes
Administrative Law Judge
DEPARTMENT OF EMPLOYMENT SECURITY

This decision will become final unless, within ten days from December 21, 1988, 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

cc: Safety First Flagging
Attn: Jill B. Stain
762 South Main
Willard, Utah 84304

Utah Legal Services
The Eccles Building, Suite 522
385 - 24th Street
Ogden, Utah 84401

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