

1980

# William D. Millet v. Industrial Commission of the State of Utah-Board of Review : Appellant's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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WILLIAM D. MILLETT, )  
Plaintiff and Appellant, )  
vs. ) No. 16385  
INDUSTRIAL COMMISSION OF THE )  
STATE OF UTAH-BOARD OF REVIEW )  
Defendant and Respondent.)

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APPELLANT'S REPLY BRIEF

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Appeal from The Industrial Commission of Utah  
Department of Employment Security

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## AUTHORITIES CITED

### STATUTES CITED:

Utah Code Annotated 1953 as amended	
35-4-6(d).....	1,2,3,5
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STATE OF UTAH-BOARD OF REVIEW,	)	
Defendant and Respondent.)	)	

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POINT I

THE DEFENDANT'S DENIAL WAS CAPRICIOUS, ARBITRARY AND UN-REASONABLE as it did not require repayment of benefits received by reason of fraud as specified under Section 35-4-6(d) and assign the remaining overpayment under Section 35-4-6(e) as specified by statute.

POINT II

PLAINTIFF DOES NOT CONTEND THAT THE UTAH STATE SUPREME COURT HAS IMPROPERLY INTERPRETED THE INTENT OF THE UTAH STATE LEGISLATURE IN ITS ENACTMENT OF SECTION 35-4-5(e) UTAH CODE ANNOTATED, 1953 AS AMENDED. Plaintiff does contend that the Court has not been asked prior to the instant case, to interpret the intent of the legislature in its enactment of Sections

35-4-6(d) and 35-4-6(e) as they relate to determinations made under Section 35-4-5(e) of the Act.

Defendant suggests that Plaintiff states the period of disqualification for fraud should be less than the 52 weeks required by statute. Plaintiff states no such thing. Plaintiff agrees that the claimant who commits a fraud invokes the full administrative penalty of fifty-two weeks disqualification. Defendant suggests that Plaintiff states that some monies received during such disqualification period should not be included in the attendant overpayment for that period. Plaintiff states no such thing. Plaintiff does maintain that such benefits as were not received by reason of fraud or fault can not be assessed under Section 35-4-6(d). Plaintiff states that benefits to which no material infraction attaches and which are later assessed in overpayment, must be assessed under Section 35-4-6(e).

Defendant notes that the Employment Security Act makes no distinction between "simple" fraud and "compound" fraud. Plaintiff made these distinctions for the sake of definition on page 14 of his Brief, as the Defendant noted. Defendant suggests that, because the Act makes no such distinction, the definitions are invalid.

Plaintiff states that the words of Section 35-4-5(e),

"For the weeks with respect to which he had willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this act..."

mean that the claimant is disqualified for a 52 week period for every week with respect to which he perpetrated such fraud whether or not only one false statement was made.

Plaintiff maintains the definitions are valid and that reasonable argument has not been made against them.

Defendant states on page 10 of his brief that:

"Plaintiff's interpretation of Section 5(e) would render a nullity of any penalty except in those cases where the fraud is discovered at its inception, for certainly the individual who is required after the fact to repay only those monies obtained by reason of his fraud suffers no penalty whatsoever. Such would be the situation in the instant case were Plaintiff's interpretation of Sections 35-4-5(e) and 35-4-6(d) to be adopted by this Court."

Plaintiff's interpretation of Section 35-4-5(e) does no such thing. The penalty is not nullified and the Court is reminded that the period of disqualification in the instant case is still in effect at this very moment.

Defendant maintains on page 10 of his Brief that case number 65-BR-375 in which the Board of Review held that the

hearings representative lacked jurisdiction to correct an erroneously calculated overpayment, does not relate to the instant case. On the contrary, Plaintiff believes the decision cited shows that the Defendant and the Board of Review have acted capriciously in interpreting the Act in past cases. Plaintiff contends that the department had continuing jurisdiction in that matter as defined in Section 35-4-6(b) of the Act which limits review to one year except in cases of fraud or claimant fault.

Plaintiff contends that benefits received to which no material infraction attaches can not be said to have been received by claimant fraud or fault. As such, that portion of overpayment to which no material infraction attaches must be assigned to Section 35-4-6(e), which Defendant quotes on page 6 of his Brief but with respect to which he made no further reference.

Defendant has not addressed Plaintiff's argument that claimant A, whose gross payable on his claim was \$3,600 and who obtained \$1.00 by reason of fraud on his first compensable week receives the exact same penalty as claimant B who received \$100.00 per week for 36 weeks by reason of fraud. Each claimant is disqualified for a 52 week period and each is charged

\$3600.00 in overpayment.

Such an interpretation ignores the mandates of the overpayment sections of the Act, specifically failing to apply Section 35-4-6(e) to those weeks of disqualification to which no material infraction attaches.

In this way the determination does not conform to statute, and is clearly capricious, arbitrary, and unreasonable.

POINT III

REFER TO APPELLANT'S BRIEF ON APPEAL.

POINT IV

REFER TO APPELLANT'S BRIEF ON APPEAL.

CONCLUSION

For the reasons cited above, Plaintiff requests the Court to reverse Defendant's findings that Plaintiff knowingly withheld material facts of work and earnings, reverse Defendant's assessment of 52 week disqualification periods, and reverse Defendant's assessment of overpayments.

For the reasons cited above, Plaintiff requests that the Court reverse the findings of the Board of Review of the Industrial Commission. Plaintiff further requests that the Court find that the Department of Employment Security and its Board of Review have improperly construed and misapplied 35-4-5



(e), 35-4-6(d), and 35-4-6(e) and these statutes have not been properly applied and requests that the Court overturn the decision of the Board of Review.

Plaintiff shows that the intent of the legislature and the rules of equity could be better applied and that there are alternate methods of collection that could be used by the Department of Employment Security. The Plaintiff requests that the Court overturn the decision of the Board of Review and instruct the Department of Employment Security to use the alternate methods available by statute.

Plaintiff further requests that the Court find that the application of U.C.A. 35-4-5(e), in the instant case, violates petitioners rights under the Constitution of the United States and the State of Utah.