

1980

John R. Hinchcliff v. Industrial Commission of Utah : Brief of Appellant

Utah Supreme Court

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John R. Hinchcliff; Plaintiff

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IN THE SUPREME COURT
OF THE STATE OF UTAH

JOHN R. HINCHCLIFF
Plaintiff-Claimant

v.

INDUSTRIAL COMMISSION OF UTAH
Defendant

Case No. 16890

BRIEF OF APPELANT

Appeal from a DECISION and ORDER of The Board of Review of The
Industrial Commission of Utah.

JOHN R. HINCHCLIFF
Plaintiff

FILED

MAR 27 1960

FACTS

On approximately June 1, 1978, the claimant received a notification from the Department of Employment Security that he had been denied benefits for the weeks from March 5, 1978 to April 15, 1978. Checks totalling \$595.00 for these five weeks had already been received by the Claimant. These benefits were denied because the Claimant had previously indicated that he had refused employment with the Olivetti Corporation. The Claimant sent a timely (within 10 days of receiving notification) letter of appeal to the Department. This appeal was not acted upon and no hearing was granted. Several weeks later (Department records will show exact dates) in response to further Department correspondence the Claimant filed a second appeal. This appeal was acknowledged by the Department but was determined to be untimely and a hearing on the original issue was not granted. The above is case no. 78-A-2344

On approximately December 15, 1978 (records will show exact date) the Claimant again filed a claim for unemployment benefits but was disqualified because of insufficient weeks. The Claimant received notice of this disqualification on January 17, 1979. The Claimant filed again on January 18, 1979, having been unemployed since December 15, 1978. The Claimant was determined to be eligible for benefits (new calendar quarter) and the claim was dated Jan. 14, 1979. The Claimant filed for benefits but received no money until the \$595.00 from the original claim had been offset. The Claimant became employed during the week ended March 3, 1979 but continued to file for benefits through the week ended March 22, 1979. He did this because he was extremely frustrated with the appeal process and felt he had been dealt with unfairly in not being granted a hearing on the original issue of the original claim (March 5, to April 15, 1978), and because he believed it to be the only way to offset the \$595.00 which had been erroneously assessed against him. Total money received by the Claimant from Jan. 14, 1979 to March 22, 1979 was \$93.00. The Claimant has been ordered to pay to the Department \$258.00 for the weeks March 3, 1979 to March 22, 1979.

ARGUMENT

POINT I

CLAIMANT DID NOT REFUSE AVAILABLE WORK.

It is the testimony of the Claimant that had a hearing on the original issue been granted, the following information would have been presented: A job with the Olivetti Corporation was never offered to the Claimant. The Claimant stated on the Department questionnaire that he had refused work with said Corporation because he felt that if he had made a greater effort to secure the job, it might have been offered to him. In reality the job was not offered to him and he did not refuse work. This information was contained in both letters of appeal sent to the Department. It would have been a simple matter to verify this information and the department erred in not doing so. The Claimant could not have refused work that was not offered to him and should not have been denied benefits for the weeks from March 5, 1978 to April 15, 1978.

POINT II

THE DEPARTMENT ERRED IN THE DETERMINATION OF THE BENEFIT PERIOD.

The Claimant was eligible for benefits as of January 1, 1979 but the claim was not made effective untill Jan. 14, 1979. The claimant should have received benefits for the week beginning Jan. 7, 1979 but did not. Since the claimant filed for benefits as early as Dec. 15, 1978 it was clearly his intention to file from the first of the year. He did not reapply untill Jan. 18, 1979 because he was not aware of his disqualification untill he received the notice from the Department on Jan. 17, 1979. (Please see the fifth paragraph of the Notice of Denial of Benefits from the Hearings Representative George W. Kelly, dated September 28, 1979. The representative questions the accuracy of the claim being dated Jan. 14, instead of Jan. 7, 1979.)

CONCLUSION

The Claimant was eligible for \$595.00 of benefits which he did not receive. (This amount was used to offset the balance from the original claim) The Claimant was eligible for an additional \$86.00 of benefits for the week of Jan. 7, 1979. These amounts should be used to offset the \$258.00 which the Claimant has been ordered to pay. This results in a net balance due the Claimant.

Dated this 26th day of March, 1980.

Respectfully submitted,



John R. Hincheliff - Claimant, Plaintiff