

1981

# John R. Hinchcliff v. Industrial Commission of Utah : Brief of Defendant

Utah Supreme Court

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# IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN R. HINCHCLIFF,

Plaintiff-Appellant,

vs.

Case No. 16890

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

Defendant-Respondent.

## DEFENDANT'S BRIEF

**Appeal from a decision of the Department of Employment Security,  
State of Utah, as upheld by the Appeals Referee  
and the Board of Review of the Industrial Commission,  
State of Utah**

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# IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN R. HINCHCLIFF,

Plaintiff—Appellant,

vs.

Case No. 16890

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

Defendant—Respondent.

## DEFENDANT'S BRIEF

### STATEMENT OF NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, for the purpose of judicial review of a decision of the Board of Review of the Industrial Commission of Utah, affirming the decision of the Appeal Referee, which denied benefits to the Plaintiff for a period of fifty-two (52) weeks and assessed an overpayment in the amount of \$258.00, on the grounds the Plaintiff knowingly withheld material facts regarding work and earnings in order to receive benefits to which he was not entitled. The questions are whether the Findings of Fact are supported by the evidence and whether the law is properly applied in the instant case.

### RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the decision of the Board of Review that Plaintiff was not eligible for unemployment compensation during the period in question and that the overpayment in the amount of \$258.00 be set aside. Defendant seeks affirmance of the decision of the Board of Review.

## **STATEMENT OF FACTS**

In his Brief the Plaintiff has made reference to a prior case, No. 78-A-2344, 78-BR-184, the record of which is not part of this case and was, therefore, not certified to the Court. Defendant will, therefore, summarize the facts of that prior case for the benefit of the Court and offer to certify any portion, or all, of that record to the Court if the Court so desires.

The prior controversy arose as a result of a signed statement by Plaintiff dated April 20, 1978, wherein he said:

"At Olivetti I was offered a job, however, I refused this because it was \$500 guarantee and commission."

Based on that statement unemployment benefits were denied. Plaintiff subsequently appealed. An Appeal Referee held that Plaintiff's appeal was untimely, thus leaving the Referee without jurisdiction to rule on the merits of the case. Plaintiff then appealed to the Board of Review, which affirmed the decision of the Appeal Referee. Plaintiff did not further pursue his appeal rights. (R.00015)

Plaintiff thereafter withheld information of his work and earnings on his claims for the weeks ended March 3, 10, and 17, 1979, as his means of redressing the wrong he felt the Commission had committed on his prior claim. (R.00015)

## **ARGUMENT**

### **POINT I**

**THAT IN REVIEWING DETERMINATIONS OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE COMMISSION FINDINGS IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.**

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated 1953, provides in part:

In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be disturbed. *Martinez v. Board of Review*, 25 U.2d 131, 477 P.2d 587 (1970). A reversal of an order of the Department denying compensation can only be justified if there is no substantial evidence to sustain the determination and the facts giving rise to a right to compensation are so persuasive that the Department's denial was clearly capricious, arbitrary and unreasonable. *Kennecott Copper Corporation Employees v. Department of Employment Security*, 13 U.2d 262, 372 P.2d 987 (1962); *Gocke v. Wiesley*, 18 U.2d 245, 420 P.2d 44, 45 (1966). This Court stated in *Members of Iron Workers Union of Provo v. Industrial Commission*, 104 Utah 242, 248; 139 P.2d 208, 211 (1943), that:

If there is substantial competent evidence to sustain the findings and decision of the Industrial Commission, this Court may not set aside the decision even though on a review of the record we might well have reached a different result.

This Court has adhered to the same standard of review in cases involving violation of Section 35-4-5(e) of the Utah Employment Security Act. *Decker v. Industrial Commission of Utah, Department of Employment Security*, 533 P.2d 898 (1975); *Whitcome v. Department of Employment Security, Industrial Commission of Utah*, 564 P.2d 1116 (1977).

## POINT II

THE DECISION OF THE BOARD OF REVIEW AND THE APPEAL REFEREE IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE BOARD OF REVIEW AND APPEAL REFEREE DID NOT ERR IN FINDING THAT PLAINTIFF KNOWINGLY WITHHELD MATERIAL INFORMATION IN ORDER TO OBTAIN BENEFITS TO WHICH HE WAS NOT ENTITLED.

Plaintiff does not dispute the fact that he withheld material information. (Brief of Plaintiff, Facts, and Argument Point I.) It is Plaintiff's contention on appeal that the Commission



wrongfully denied him benefits on a prior claim and that the amount he was wrongfully deprived of should be used as a setoff against the fraud overpayment.

The facts of both the instant case and Plaintiff's failure to pursue his appeal remedies to the Supreme Court in his prior case are amply evidenced in Plaintiff's testimony before the Appeal Referee in the instant case:

Referee: When you filed each of these claims, why didn't you report that you had worked for Kedman?

Mr. Hinchcliff: Because I wanted to work off the overpayment that was erroneously levied against me.

Referee: Okay. When you filed your claim effective 1/14/79 there was an overpayment of \$595 from a prior benefit year.

Mr. Hinchcliff: Uh-huh.

Referee: And I believe that was a result of the decision denying benefits on the grounds you failed without good cause to accept available, suitable work. And that matter was appealed to the Board of Review and they held that you had failed to timely appeal. Did you know that work and earnings should be reported?

Mr. Hinchcliff: Yes.

Referee: And because of the overpayment you apparently decided not to report it; is that correct?

Mr. Hinchcliff: I felt it was my only avenue.

Referee: Because you didn't get any relief on appeal here?

Mr. Hinchcliff: Right. I was told my only avenue of appeal was the Utah Supreme Court. (R.00015)

Three facts are evident from the foregoing testimony: 1) Plaintiff knew that work and earnings should be reported; 2) Plaintiff pursued his appeal remedy in the prior case to the Board of Review, but not to the Supreme Court; and 3) Plaintiff had been notified of his right to appeal that case to this Court. Plaintiff's present appeal is an attempt to now obtain judicial review of his prior case.



Section 35-4-10(h) and (i), Utah Code Annotated 1953, provide in part as follows:

(h) Any decision in the absence of an appeal therefrom as herein provided shall become final ten days after the date of notification or mailing thereof and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission and Board of Review as provided by this Act. The Commission shall be deemed to be a party to any judicial action involving any such decision and shall be represented in any such judicial action by any qualified attorney employed by the Commission and designated by it for that purpose or at the Commission's request by the attorney general.

(i) Within ten days after the decision of the Board of Review has become final any party aggrieved thereby may secure judicial review thereof by commencing an action in the Supreme Court against the Board of Review for the review of its decision in which action any other party to the proceeding before the Board of Review shall be made a defendant.

The decision of the Board of Review in the prior case, which was mailed on November 20, 1978, became final on December 3, 1978. Even if the Board of Review were clearly wrong in its decision of November 20, 1978, a proposition which Defendant strenuously disputes, this Court lacks jurisdiction to review said decision by reason of Plaintiff's conscious determination not to pursue a timely appeal of that decision, as provided by law. (R.00015)

This case is very similar on its facts to *Johnson v. Board of Review*, Case No. 16939, decision filed January 7, 1981. In *Johnson* the claimant did not appeal a denial of benefits, but thereafter failed to report work and earnings in a self-help attempt to rectify what he considered to have been an injustice. As in the instant case, *Johnson* did not dispute the fraud assessment under Section 5(e), but contended that he was entitled to the compensation previously denied, as a setoff to the repayment order. This Court upheld the Board of Review's refusal to review the prior denial of benefits. See also *Reliable Furniture Co. v. Fidelity and Guaranty Insurance Underwriters*, 14 U. 2d 169, 380 P. 2d 135 (1963); *Corbet v. Corbet*, 24 U. 2d 378, 472 P. 2d 430 (1970)

In the instant case Plaintiff has attempted to justify his fraudulent acts by alleging a previous wrongful denial of benefits. He states in his Brief, *Facts*, as follows:

The claimant [Plaintiff] became employed 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

delt [sic] 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.

By his own admission Plaintiff failed to seek redress in this Court and chose rather to avail himself of self-help by withholding material information on his claims for the weeks ended March 3, 10, and 17, 1979, which are the actual subject matter of this controversy.

Under such circumstances this Court lacks jurisdiction to consider Plaintiff's prior claim and the decision of the Board of Review in the instant matter should be affirmed.

### **POINT III**

**PLAINTIFF SHOULD HAVE ASKED DEFENDANT TO BACKDATE HIS CLAIM TO JANUARY 7, 1979, RATHER THAN MAKE FRAUDULENT CLAIMS: NEVERTHELESS, PLAINTIFF HAS, IN EFFECT, RECEIVED CREDIT FOR THE WEEK OF JANUARY 7 THROUGH 13, 1979.**

With respect to Plaintiff's argument, Point II, wherein Plaintiff states that the Commission erred in the determination of the benefit period, Defendant admits that Plaintiff's January 18, 1979 claim was, in effect, a refiling of a December filing which was disallowed "on the grounds that claimant had insufficient weeks of employment in the base period" (R. 00022), and that it would have been proper to make the new claim effective as of January 7, 1979. As stated by the Hearing Representative, "It is not clear why the new claim was not made effective January 7, 1979."

What is clear is that Plaintiff made no effort to have the error corrected other than to engage in self-help by withholding material information to receive benefits for weeks in which he worked and received earnings.

The issue was never raised until after Defendant found Plaintiff had claimed benefits to which he was not entitled.

Nevertheless, Plaintiff claimed benefits for 4 weeks in which he had, but failed to report, work and earnings (R. 00025). (Plaintiff earned \$22.75 during the week ended 2/24/79 which he also failed to report. The Appeal Referee did not consider this week because he applied the 1979 amendments of the Employment Security Act, under which the \$22.75 would not be material. However, the earnings are material under the law applied by the Board of Review.) He could have and perhaps should have been required to repay the benefits received for 4 weeks or \$344.00. Instead, he was required to only repay the amount received for 3 weeks or \$258.00. The requirement to repay 3 weeks benefits rather than 4 appears to have been an oversight due to a change in the law effective July 1, 1979, rather than a determination to offset the week of January 7, 1979, for which Defendant claims he should have received benefits. Nevertheless, whether by oversight or not, Plaintiff has in effect received credit for the week in question.

### **CONCLUSION**

Throughout the proceedings in this case Plaintiff has attempted to justify his intentional and false withholding of work and earnings information on 1979 claims by alleging that he had been dealt with unfairly by the Commission in 1978. Plaintiff makes this contention despite the knowledge that redress of the alleged wrong was available to him in this Court. However, rather than avail himself of his right to judicial review, Plaintiff chose instead to resort to self-help. Such action is contrary to the principles upon which judicial institutions have been established and should not be condoned. The decision of the Board of Review should therefore, be affirmed.

Respectfully submitted this \_\_\_\_\_ day of January, 1981.

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Special Assistants  
Attorney General

BY: \_\_\_\_\_  
**K. Allan Zabel**

## **CERTIFICATE OF MAILING**

I DO HEREBY CERTIFY that I mailed two copies of the foregoing Defendant's Brief to JOHN R. HINCHCLIFF, Plaintiff, filing on behalf of himself, 1865 South 400 East, Salt Lake City, Utah 84115, this \_\_\_\_\_ day of January, 1981.

BY: \_\_\_\_\_  
K. Allan Zabel