

1980

James H. Johnson v. Board of Review of the, Industrial Commission of Utah, Unemployment Compensation Appeals : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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JAMES H. JOHNSON,

:

Plaintiff-
Appellant,

:

:

v.

Case No. 16939

:

BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION
OF UTAH, UNEMPLOYMENT
COMPENSATION APPEALS,

:

:

Defendant-
Respondent.

:

---oooOooo---

BRIEF OF APPELLANT

Appeal from an Order of the Board of Review of the
Industrial Commission of the State of Utah,
Unemployment Compensation Appeals

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FILED

MAY 5 1980

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

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JAMES H. JOHNSON,	:	
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Plaintiff-	:	
Appellant,	:	
	:	
v.	:	Case No. 16939
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BOARD OF REVIEW OF THE	:	
INDUSTRIAL COMMISSION	:	
OF UTAH, UNEMPLOYMENT	:	
COMPENSATION APPEALS,	:	
	:	
Defendant-	:	
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Defendant-	:	
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BRIEF OF APPELLANT

NATURE OF ACTION

This action comes to the court upon plaintiff's petition for a writ of review, issued pursuant to Section 35-4-10(i), Utah Code Ann. (1953 as amended). This petition requested a review of an order of the Board of Review of the Industrial Commission, Unemployment Compensation Appeals. The case before the Board of Review was James H. Johnson v. Department of Employment Security, Case No. 79-BR-174.

DISPOSITION IN LOWER COURT

The Board of Review affirmed the findings of fact and conclusions of law of the Appeal Referee of the Utah State Department of Employment Security, holding that the plaintiff knowingly withheld the material fact of his work and earnings to receive unemployment compensation benefits

to which he was not entitled. The Board of Review modified the decision of the Appeal Referee insofar as that referee had doubled the amount of the overpayment allegedly made to the plaintiff. The Board of Review held him liable to repay only that amount of unemployment compensation benefits actually received, \$640, and disqualified him from such benefits for one year.

RELIEF SOUGHT ON APPEAL

Plaintiff requests the Court to find that the Board of Review unreasonably refused to consider the plaintiff's claim that he was wrongfully denied unemployment compensation benefits and that the amount so denied is a setoff to any amount he may owe to the Department of Employment Security. Plaintiff requests the Court to then remand this case to the Board of Review for a consideration of plaintiff's claim that he was wrongfully denied unemployment compensation benefits.

STATEMENT OF FACTS

In August, 1978, plaintiff applied with the Department of Employment Security, State of Utah, hereinafter the "Department" for unemployment compensation benefits. This application occurred approximately six weeks after plaintiff's voluntary termination of employment based upon the employer's demand that he engage in what he believed to be wrongful and possibly illegal conduct. Plaintiff's

application to backdate unemployment compensation from the date of termination was denied without comment, nothing was said of future benefits and no notice of the right to appeal was given.

In October, 1978, plaintiff filed an interstate application for unemployment compensation benefits, based upon the same voluntary termination. Benefits of \$128 per week were awarded, commencing on or about October 29, 1978.

On or about March 1, 1979, plaintiff began a probationary employment period with Howe Building Products. He was to receive no income or wages from the employer until the last day of March, 1979. Without intending to violate any department rules or the Employment Security Act, Section 35-4-1 et seq., Utah Code Ann. (1953 as amended), plaintiff continued to accept unemployment compensation. No other income was available to the plaintiff during March, 1979 and to have foregone unemployment compensation would have been to place plaintiff and his family on public assistance.

Plaintiff does not dispute the finding that he is obligated to repay to the Department the sum of \$640 representing that amount received during March, 1979. Plaintiff does dispute the refusal of the Department's Appeal Referee and the Board of Review to consider the denial of plaintiff's August, 1978 application as a setoff to that amount.

ARGUMENT

I. PLAINTIFF WAS WRONGFULLY DENIED A HEARING FOR UNEMPLOYMENT COMPENSATION BENEFITS.

Because there has never been an adequate hearing of plaintiff's August, 1978, claim, it is difficult to argue the wrongful character of the Department's consideration of the claim. However, some direction in reviewing the action of the Board of Review may be acquired from the statute granting unemployment benefits. It is the intention of the Employment Security Act, Section 35-4-1, et seq., Utah Code Ann. (1953 as amended), to lessen the burden of unemployment that falls upon the worker and his family. The maintenance of purchasing power and limiting the serious social consequences of unemployment are objectives of the Act. Section 35-4-2, Utah Code Ann. (1953 as amended). Given such purposes, the Employment Security Act is to be liberally construed. Northern Oil Company v. Industrial Commission, 104 Utah 353, 140 P.2d 329 (1943).

As is evidenced by Section 35-4-5(a) Utah Code Ann. (1953 as amended), even a worker who voluntarily leaves employment is to be provided the opportunity to immediately acquire unemployment compensation benefits when the circumstances of the voluntary termination are of such a nature that it is contrary to equity and good conscience to impose a disqualification. This liberal construction is appropriate

in the case now before the court where the employer was demanding that the plaintiff engage in wrongful conduct. Record, page 8. This was the uncontradicted testimony of the plaintiff, in the hearing before the Referee. Citation to the hearing is given as Record, page ____.

Contrary to the statutory purpose of the Employment Security Act, plaintiff received no response to his August application for future benefits and no consideration was made of the waiver of the waiting period before which benefits may be granted in the case of a voluntary termination of employment. Record, page 9; Section 35-4-5(a) Utah Code Ann. (1953 as amended). The failure of the Department to consider plaintiff's claim is consistently reported throughout the record before the Court. The Board of Review's and Appeal Referee's response to the plaintiff's attempt to resolve the issue of their denial of benefits has been simply to ignore plaintiff in all respects.

II. THE BOARD OF REVIEW ARBITRARILY AND UNREASONABLY REFUSED TO CONSIDER THE WRONGFUL DENIAL OF UNEMPLOYMENT COMPENSATION BENEFITS TO PLAINTIFF.

Continental Oil Company v. Board of Review of the Industrial Commission, 568 P.2d 727 (Utah 1977), sets forth the role of this court in considering the decision of the Board of Review. That role is to sustain the determination of the Board of Review unless the record clearly and persuasively

proves the action of the board was arbitrary, capricious and unreasonable. By completely ignoring an issue properly before it, the Board of Review clearly acted in an arbitrary, capricious and unreasonable fashion.

In the decision of the Appeal Referee, it was stated:

In the course of the hearing, testimony was given concerning alleged prior department errors in handling of the claimant's claim in August of 1978. As it occurred prior to the weeks in question and did not relate directly to the issue in question, no comment was made on this information.

The Board of Review, in its decision of February 5, 1980, and from which this appeal is taken, adopted the findings of fact and conclusions of law of the Appeal Referee; adopting the Appeal Referee's simple refusal to deal with the denial of benefits issue.

At the very minimum, Article I, Section 7, of the Constitution of the State of Utah; and Amendment 5 and Amendment 14 of the Constitution of the United States, require that a party be given notice of any action which may determine his rights and a hearing on the merits of a claim prior to governmental action which determines those rights. Christiansen v. Harris, 109 Utah 1, 163 P.2d 314 (1945); Riggins v. District Court of Salt Lake County, 89 Utah 183, 51 P.2d 645 (1935).

The evidence contained in the record of the Appeal Referee hearing is uncontradicted that the plaintiff was not informed of his right to establish good cause for voluntary termination and thus acquire immediate unemployment compensation benefits and that there was no communication to the plaintiff with respect to his right to appeal the denial of any benefit. The Department denied benefits for the first six weeks following the plaintiff's termination of employment and made no comment as to his right to other benefits. Record, page 9. In fact, there is a statement by the Appeal Referee that,

There is documentation of a circumstance that occurred as has been indicated by Mr. Proctor.

Record, page 9.

It is equally clear that, despite attempts by the plaintiff to acquire a ruling on the issue of the wrongful denial of benefits, both the Appeal Referee and the Board of Review refused to consider the claim. At the Appeal Referee level, this refusal was in the face of evidence supporting Mr. Johnson, as stated by the Referee. Record, page 9.

Where the Board of Review refused to consider an issue that would be contrary to or offset that claim of the Department against the plaintiff, the arbitrary, capricious and unreasonable conduct required by Continental Oil Company v. Board of Review of the Industrial Commission, 568 P.2d

727 (Utah 1977), is readily found.

Certainly, the refusal by the Department to consider plaintiff's claims was not based upon the lack of jurisdiction to consider the claim. Section 35-4-6(b) Utah Code Ann. (1953 as amended) states:

Jursidiction over benefits shall be continuous. Upon its own initiative or upon application of any party affected, the commission or its authorized representatives may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits. . . . No review shall be made after one year from the date of the original determination except in case of fraud, or claim of fraud, as provided in subsection (d) of this section.

The plaintiff sought to acquire a determination of his rights to benefits by first raising the issue on September 6, 1979, in a telephone hearing with the Department, see Transcript of telephone hearing, page 4 and 5; and again in the October 16, 1979, hearing before the Appeal Referee. Record, page 9. Finally, in the plaintiff's brief submitted to the Board of Review, the wrongful denial of benefits was raised but again, was ignored. In either case, the issue was raised within one year of the first definite determination of his rights to benefits, this being the interstate claim of October, 1978.

CONCLUSION

It is not the plaintiff's purpose of this appeal

to dispute the debt owed to the Department in the sum of \$640. It is plaintiff's contention that he was wrongfully denied a hearing of his claim against the Department, such denial constituting an arbitrary, capricious and unreasonable act on the part of the Board of Review. Consequently, plaintiff requests this court to order the Board of Review to provide the plaintiff with an opportunity to fairly present his case on the merits and to receive a response from the Department. Plaintiff requests this court to find that the benefits wrongfully denied the plaintiff are a setoff to any amount due to the Department.

RESPECTFULLY SUBMITTED this ____ day of May, 1980.

DART & STEGALL

By _____
Paul H. Proctor

MAILING CERTIFICATE

I certify that I mailed two copies of the foregoing plaintiff-appellant's brief to Floyd G. Astin and K. Allan Zabel, attorneys for defendants-respondents, 174 Social Hall Avenue, Salt Lake City, Utah 84111, this ____ day of May, 1980.
