

1981

Royle E. Stillman v. The Industrial Commission of Utah, Department of Employment Security : Defendant's Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

ROYLE E. STILLMAN,

Plaintiff-Appellant,

vs.

Case No. 17665

THE INDUSTRIAL COMMISSION
OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY,

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, seeking judicial review of the decision of the Board of Review of the Industrial Commission of Utah, which affirmed the decision of an Appeal Referee which denied benefits to the Plaintiff, Royle E. Stillman, effective September 7, 1980 to January 10, 1981, pursuant to Section 35-4-5(j), Utah Code Annotated 1953, as amended (Pocket Supplement 1979), on the grounds the Plaintiff was a professional athlete with a reasonable assurance of participating in professional sports in the next successive sport season.

DISPOSITION BELOW

Plaintiff was denied unemployment benefits by a Department Representative pursuant to Section 35-4-5(j), Utah Code Annotated 1953, as amended (Pocket Supplement 1979), on the grounds he is a professional athlete with reasonable assurance of participating in professional sports in the next successive sport season. Plaintiff appealed to an Appeal Referee who affirmed the disqualification by decision dated February 17, 1981. Upon further appeal, the Board of Review affirmed the decision of the Appeal Referee by decision issued April 1, 1981, in Case No. 80-A-4158, 81-BR-5.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks a finding by the Court that benefits should be paid from September 7, 1980 to January 12, 1981. Defendant seeks affirmance of the decision of the Board of Review.

STATEMENT OF FACTS

Plaintiff has played professional baseball in both the major and the minor leagues for the last eleven seasons. (R.0019) For the last three seasons Plaintiff played for the Ogden A's in Ogden, Utah, with the last two seasons of play being for limited time only. (R.0019) Plaintiff's contract with the Ogden A's was sold to the California Angels in August 1980 and Plaintiff played out his contract through the 31st of August 1980 in Salt Lake City. Plaintiff filed a claim for unemployment benefits effective September 7, 1980, reporting that he had definite prospects of returning to work in spring training for the California Angels. (R.0020,0044) Professional sports contracts are generally reviewed during December and January of each winter. (R.0020) Plaintiff received notification

of his unconditional release by letter dated January 12, 1981. (R.0030,0031) Benefits were allowed to the Plaintiff effective January 11, 1981, on the grounds that Plaintiff no longer had reasonable assurance of returning to work during the next successive sports season. (R.0010,0015) Plaintiff exhausted his claim for benefits with the week ended April 25, 1981, having drawn \$150 per week to a maximum of \$2,100. See Claimant Record Transcript, Exhibit A at the end of Defendant's Brief.

ARGUMENT

POINT I

IN REVIEWING A DETERMINATION OF THE INDUSTRIAL COMMISSION UNDER THE UTAH EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE COMMISSION'S FINDINGS IF SUCH ARE SUSTAINED BY SUBSTANTIAL COMPETENT EVIDENCE.

Respondent submits that this Court's review of determinations of the Department is limited to deciding whether there is substantial competent evidence to sustain such determinations. 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, 12 U. 2d 262, 372 P. 2d 987 (1962); Gocke v Wiesley, 18 U. 2d 245, 420 P. 2d 44, 45 (1966); Continental Oil Company v. Board of Review of the Industrial Commission 568 P. 2d 727 (Utah 1977). In Members of Iron Workers Union of Provo v. Industrial Commission, 104 Utah 242, 248; 139 P. 2d 209, 211 (1943), this Court said:

If there is substantial competent evidence to sustain the findings and decisions 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.

POINT II

THE BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH DID NOT ERR IN DENYING UNEMPLOYMENT BENEFITS TO PLAINTIFF, AND THE DECISION IS SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE.

Section 35-4-5(j), Utah Code Annotated 1953, as amended, (Pocket Supplement 1979) provides as follows:

5. An individual shall be ineligible for benefits or for purposes of establishing a waiting period:

(j) For any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to so participate in the first of such season (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

Plaintiff's letter in lieu of a brief argues principally that he was uncertain about his future in baseball as of September 7, 1980 and that he did not have reasonable assurance of participating in the upcoming season. The term "reasonable assurance" in the context of unemployment insurance disqualification provisions such as in the instant case has not been previously defined by this Court, or to our knowledge by any other Court. Although the instant matter is mooted by the claimant's exhaustion of benefits, this issue is one which should be adjudicated by the Court because it is unlikely that this Court will have timely opportunity to deal with this particular issue due to the length of time involved in the appellate procedure, both at the administrative level and before this Court. Duran v. Morris, Utah, #16871, filed July 21, 1981, citing Wickham v. Fisher, Utah, #16322, filed April 22, 1981, and quoting as follows:

"The principles that determine the justiciability of the instant case are the well established rules which permit a court to litigate an issue which, although technically moot as to a particular litigant at the time of appeal, is of wide concern, affects the public interest, is likely to recur in a similar manner, and, because of the brief time any one person is affected, would otherwise likely escape judicial review [Citations omitted.]"

The disqualification of professional athletes from receipt of unemployment benefits was added to the Employment Security Act in 1979 as mandated by prior changes in the Federal Social Security Act. It was the intent of Congress that professional athletes should be denied unemployment benefits between successive sports seasons. P.L. 94-566: Staff Report, Senate Committee on Finance, September 3, 1976, Page 57; Staff Report, Senate Committee on Finance and House Committee Ways and Means, Page 6.

The term "reasonable assurance" was intended to assure that benefits would be denied to those athletes who do continue from season to season with their sports career, while allowing for the payment of benefits to those individuals who are released from their contracts and are without any assurance of finding employment in the next season. Obviously, the term "reasonable assurance" does not require a guarantee of employment at the beginning of the next succeeding season, only that the employee may reasonably expect to have work in the succeeding season.

In the instant case the Plaintiff had been employed as a professional baseball player for eleven seasons. Although he was thirty years old (R.0019) at the end of the 1980 season, his contract had been picked up by the California Angels and he further reported with his initial claim for benefits that he had definite prospects of working with the Angels' Organization in the next successive season. Under such circumstances the Department of Employment Security and the Appeal

Tribunal had no alternative but to consider that the Plaintiff had reasonable assurance of returning to professional baseball and, therefore, was subject to the disqualifying provision of Section 5(j). However, when the claimant received notice of his unconditional release he no longer had such assurance and was therefore eligible for unemployment benefits, which commenced with the week beginning January 11, 1981. Thus, the facts involved in this case support the decision of the Board of Review and benefits were properly denied to January 10, 1981.

CONCLUSION

The decision of the Appeal Referee and the Board of Review that Plaintiff had reasonable assurance of returning to work as a professional baseball player is supported by substantial competent evidence during the periods September 7, 1980 through January 10, 1981. The decision should, therefore, be affirmed.

Respectfully submitted this ____ day of September, 1981.

DAVID L. WILKINSON
Attorney General of Utah

FLOYD G. ASTIN
K. ALLAN ZABEL
Special Assistants
Attorney General

By: _____
K. Allan Zabel
Special Assistant Attorney General

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Defendant's Brief to Mr. Royle E. Stillman, Plaintiff, 321 26th Street, Hermosa Beach, California 90254

07/21/01

CLAIMANT RECORD TRANSCRIPT

WP

546 82 9058 02 07 00 150 2100 00 1
 ROYLE E STILLMAN 02 03 01 97
 321 26TH ST 7945 4316 7829 09 23 00
 HERMOSA BCH CA 90256 1 53 07 07 00 01 10 81
 12 14 00 01 17 81 04 25 81

10 01 00 09 23 00

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 PASEBALL

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EXHIBIT A

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 555356 03 05 1 02 28 150

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594229 03 20 1 03 07 150
 594230 03 20 1 03 14 150

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633052 04 02 1 03 21 150
 633053 04 02 1 03 28 150
 665411 04 17 1 04 04 150
 665412 04 17 1 04 11 150
 707794 05 04 1 04 18 150
 707795 05 04 1 04 25 150

August 25th, 1981

Royle E. Stillman
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FILED

AUG 28 1981

Clerk, Supreme Court, Utah

Case No. 17665; Royle E. Stillman VS. The Industrial Commission of Utah,
Department of Employment Security.

To the Supreme Court of Utah and The Honorable Justices Thereof:

On September 7th, 1980 I opened my claim by trying to secure unemployment benefits due to the fact, that I was no longer employed as a baseball player, and that I was very uncertain about my future in baseball, and without an income. Under Utah Code Annotated 1953 section 35-4-5(J) benefits were denied.

After two recorded hearings, timely appeals, motions, memorandums, several long distance phone calls, and almost one year wait, I tried to convince the department that I was very doubtful, and uncertain about my future in Baseball, and that I was unemployed and had no income.

Then on January 12th, 1981 I received notice of release from the California Angels Organization, which simply states that, "There will not be a position available for you in the upcoming season".

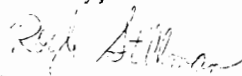
The only reasonable assurance of job placement in Professional Baseball is if you are protected by the Organizations forty man roster. The forty man roster consists of the Organizations top forty players, and twenty-five will remain with the Major League Team, the other fifteen players are considered future prospects and will be filtered through the minor league system. I was not placed on this roster at anytime, therefore, I believe I did not have a reasonable assurance of participating in the upcoming season.

My argument is that, after considering the facts, my last day of employment was August 31st, 1980. I am still presently unemployed and feel that I am 100% removed from baseball.

I feel that back benefits should be paid from the beginning of this claim from September 7th, 1980 to January 12th, 1981. I also feel that some sort of benefits should be extended through the entire length of this existing claim.

Thank you for your attention and consideration to this matter.

Sincerely,


Royle E. Stillman