1983

George Brockel v. Industrial Commission of Utah : Brief of Respondent

Utah Supreme Court

Michael E. Bulson; Utah Legal Services, Inc.; Attorney for Appellant;
K. Allan Zabel; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE BROCKEL,

Appellant,

vs.

Case No. 18233

THE INDUSTRIAL COMMISSION OF UTAH, DEPARTMENT OF EMPLOYMENT SECURITY,

Respondent.

RESPONDENT'S BRIEF

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

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IN THE SUPREME COURT
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STATEMENT OF NATURE OF THE CASE

Appellant, George Brockel, appeals from a decision of the Board of Review of the Industrial Commission of Utah which affirmed the decision of the Appeal Referee which held that the Utah Department of Employment Security has jurisdiction to recover an outstanding overpayment of unemployment compensation benefits owing to the North Dakota Employment Security Office by the Appellant.

DISPOSITION BY BOARD OF REVIEW
THE INDUSTRIAL COMMISSION OF UTAH

A representative of the Utah Department of Employment Security issued a determination dated June 5, 1981, advising Appellant that a $1400 overpayment owed by Appellant to the North Dakota Employment Security Bureau would be assessed against his Utah claim for benefits. The Department Representative determined this overpayment would be offset by valid claims filed against the State of Utah. (R.0043) Timely appeal was made by the Appellant to the Appeals Referee of the Department of Employment Security. (R.0042) Subsequent to a hearing held on July 27, 1981, the Appeals Referee determined that Utah does have jurisdiction to recover the overpayment for North Dakota pursuant to Part V of the Employment Security Manual, Section 5930E. (R.0031,0032) The Appellant appealed to the Board of Review (hereafter, the Board) (R.0030), which decided to remit the entire record to the North Dakota Bureau of Employment Security to consider whether the Appellant had a further right of appeal in North Dakota. (R.0024,0025) Subsequent to a North Dakota review and decision which affirmed its earlier decision establishing the overpayment, the Board affirmed the Appeal Referee's decision, in Case No. 81-A-2658, 81-BR-284 (Review). (R.0013,0014)

RELIEF SOUGHT ON APPEAL

Appellant, George Brockel, seeks reversal of the decision of the Board of Review. Respondent seeks affirmance of the Board's decision.

STATEMENT OF FACTS

The Respondent agrees with the Statement of Facts set forth in the Appellant's Brief.

POINT I

THE BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION DID NOT ERR IN REMITTING UNEMPLOYMENT COMPENSATION BENEFITS TO NORTH DAKOTA.

The Appellant's main contention on appeal is that the Board of Review erred in remitting benefits to the State of North Dakota since that state is not a "transferring" state under the provisions of the Federal Unemployment Tax Act and its implementing regulations found at 20 C.F.R. Part 616. (The Department's corresponding regulations are found in the Employment Security Manual, Part V, Sections 5000 to 5999; references in this Brief will be to the C.F.R.)

The Federal Unemployment Tax Act provides that states may enter into arrangements whereby an unemployed worker with covered employment or wages in more than one state may combine all such employment and wages in one state, in order to qualify for benefits. See 26 U.S.C. Section 3304(a)(9)(B). The state in which the claimant files a combined wage claim is designated as the "paying" state. 20 C.F.R. 616.6(f). The state in which the claimant has covered employment and wages in the base period of the paying state, and which transfers such employment and wages to the paying state is designated as the "transferring" state. See 20 C.F.R. 616.6(f).

The regulations further provide that if there is an overpayment outstanding in the transferring state, the paying state may deduct the overpayment from benefits to which the combined wage claimant would otherwise be entitled, and remit them to the transferring state. 20 C.F.R. 616.8(e).

Part 616 of 20 C.F.R. pertains only to combined wage claims. As such, it does not apply to non-combined wage claim situations. Because North Dakota had no wages or employment to transfer to Utah, the Respondent concedes that they are not a "transferring" state as defined in 20 C.F.R. 616.6 (f), and that the Appellant's claim is not a "combined wage claim" with respect to North Dakota.

While North Dakota concededly is not a transferring state and the Board apparently lacks authority under 20 C.F.R. Part 616 to recover an overpayment for a non-transferring state, the Respondent notes: 1) Under its express language, 20 C.F.R. Part 616 does not prohibit a state from recovering an overpayment for a non-transferring state in a non-combined wage situation; 2) The Board of Review's decision, from which the Appellant appeals to this Court, did not rely on 20 C.F.R. Part 616 for authority; and 3) Section 35-4-21(c) of the Utah Employment Security Act, Utah Code Annotated, 1953, specifically authorizes the Board of Review to engage in the interstate exchange of information and services to facilitate the administration of the unemployment compensation laws of Utah and of other states.

The Employment Security Act, Section 35-4-21(c) provides in pertinent part:

> (c) The Administration of this act and of other state . . . unemployment compensation . . . laws will be promoted by cooperation between this state and such other states . . . in exchanging services, and making available facilities and information. The commission is therefore authorized to . . . secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation . . . law . . . (Emphasis added)

The application of Section 21(c) is not limited to situations involving combined wage claims. If it is so limited, the State of Utah would be unable to furnish information and services which it regularly provides for other states. Examples of such information and services in addition to collecting benefit overpayments include but are not limited to contacting employers pursuant to claimant investigations conducted in other states, collecting contributions on behalf of other states from employers who have moved to Utah, determining the correct amount of workable wages, contacting employers to verify information, and locating individuals who have moved to Utah.

Secton 21(c) provides that the Commission may "exercise such of the other powers provided herein" (i.e. within the Employment Security Act) to facilitate the administration of another state's unemployment compensation laws. One of the powers provided for in the Act is the deduction of an established overpayment from future benefits to which a claimant is otherwise entitled. Sections 35-4-6(d) and (e), Utah Code Annotated, 1953. In this case the Appellant's overpayment was established by a decision of the

Executive Director of North Dakota Job Service, apparently the highest level of appeal within the North Dakota Bureau of Employment Security. (R.0016, 0017)

The Respondent contends that under the Utah Code Annotated, Section 35-4-21(c), the Board's decision that "the $1400 withheld by the Department will be remitted to the North Dakota Agency" is a proper exercise of authority granted to it by statute.

The Appeals Referee held that Utah (The Commission) had jurisdiction to recover the overpayment for North Dakota and relied directly on 20 C.F.R. Part 616 for authority. (R.0030,0031) The Board affirmed "the decision of the Appeal Referee which held that Utah does have jurisdiction to recover the funds due the North Dakota Agency by the claimant," without such reliance. (R.0013,0014) In its decision it did not refer to North Dakota as a "transferring" state nor Utah as a "paying state," it did not discuss this case as a combined wage claim, it made no reference to 20 C.F.R. Part 616, and it failed to adopt the Referee's findings of fact. (Normally when the Board affirms the decision of an Appeals Referee it will include the following language: "In so holding, the Board of Review hereby adopts the findings of fact and conclusion of law of the decision of the Appeals Referee.")

This omission apparently resulted from the Appellant's failure to raise in his appeal to the Board the question of whether the Department acted properly in relying on 20 C.F.R. Part 616 in support of its actions. The Appellant appealed on the grounds that "North Dakota does not have sufficient evidence to offset valid claims" (R.0030), and that "North Dakota has

never answered any of my letters or appeals to this date." (R.0027,0028) Based on these contentions and the Appellant's statement "under oath that he did not receive the original determinations of the North Dakota Agency," the Board referred the entire matter to North Dakota for determination as to Appellant's further rights of appeal in North Dakota. (R.0025) Only after the Executive Director of the North Dakota Job Service affirmed the earlier decision establishing the overpayment did the Board affirm the Appeals Referee.

It is arguable that in failing to state reasons for its decision the Board impliedly adopted the Referee's reasoning. The Respondent contends, however, that where the Board found it unnecessary to consider the applicability of 20 C.F.R. Part 616 due to the Appellant's failure to raise that issue on appeal, and where Section 35-4-21(c), U.C.A., 1953, provides a proper basis in law that supports and authorizes the Board's determination, such determination should be affirmed.

In Continental Oil Company v. Board of Review of the Industrial Commission of Utah, 568 P. 2d 727,729 (Utah 1977), this Court stated:

> . . . the role of this Court is to sustain the determination of the Board of Review unless the record clearly and persuasively proves the action of the Board of Review was arbitrary, capricious, and unreasonable. Specifically, as a matter of law, the determination was wrong; because only the opposite conclusion could be drawn from the facts.

Furthermore, the Board's decision properly effectuates the purpose of unemployment insurance laws in withholding benefits from those who have wrongfully

received benefits as a result of misrepresentations and voluntarily quitting work when such was available.

CONCLUSION

The Respondent concedes that the Industrial Commission through its Board of Review lacks authority under the Federal Unemployment Tax Act and its implementing regulations (20 C.F.R. Part 616) to collect an outstanding overpayment for and remit such to a non-transferring state. However, Section 35-4-21(c) of the Utah Employment Security Act, U.C.A., 1953, specifically authorizes the commission to engage in interstate exchange of information and services to facilitate the administration of the unemployment compensation laws of other states. Such services include the collection and remittance of benefit overpayments in non-combined wage claim situations.

In its decision to remit to the North Dakota Agency the $1400 withheld by the Department, the Board did not rely on 20 C.F.R. Part 616 for authority nor did it refer to North Dakota as a "transferring" state. Where the Board found it unnecessary to consider the applicability of 20 C.F.R. Part 616 to this case due to the Appellant's failure to raise that issue on appeal, and where Section 35-4-21(c), U.C.A., 1953, provides a proper basis in law that authorizes the Board's determination, such determination should be affirmed. The Respondent, therefore, respectfully requests this Court to affirm the decision of the Board of Review of the Industrial Commission of Utah.

Respectfully submitted this _____ day of June, 1983.

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By_____
K. Allan Zabel

CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Respondent's Brief postage prepaid to the following this _____ day of June, 1983: MICHAEL E. BULSON, UTAH LEGAL SERVICES, INC., Attorney for Appellant, 385 - 24th Street, Suite 522, Ogden, Utah 84401-1477.

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