

2015

Kevin a.unck Appellant vs. Workforce Appeals Board

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Reply Brief, *Unck v. Workforce Appeals*, No. 20150043 (Utah Court of Appeals, 2015).
https://digitalcommons.law.byu.edu/byu_ca3/3590

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

| | | |
|-------------------------|---|---------------------------|
| KEVIN A. UNCK |) | REPOSE BRIEF OF APPELLANT |
| APPELLANT |) | Case # 20150043 |
| |) | |
| Vs. |) | |
| |) | |
| WORKFORCE APPEALS BOARD |) | |

Workforce Appeals Board
P.O. Box 45244
Salt Lake City, Utah
84145-9244
Appellee

Kevin A. Unck
P.O.Box 111
Plymouth, Utah
84330
Attorney Pro Se Appellant

TABLE OF CONTENTS

| | | |
|---------------------------|--|---|
| TABLE OF AUTHORITIES | | 1 |
| STATEMENT OF JURISDICTION | | 1 |
| STATEMENT OF ISSUES | | 1 |
| DETERMINATIVE PROVISIONS | | 1 |
| STATEMENT OF CASE | | 1 |
| RELEVANT FACTS | | 1 |
| SUMMARY OF ARGUMENT | | 1 |
| ARGUMENT | | 2 |
| ADDENDUM | | |
| A. | | |
| B. | | |
| CONCLUSION | | 2 |

TABLE OF AUTHORITIES

STATUTES
35A-4-403 (1) (c)
35A-4-405 (3) (a) (b) (i) (ii) (c) (i) (ii) (iii) (iv) (vi) (vii)

FILED
UTAH APPELLATE COURTS

MAY 27 2015

IN THE UTAH COURT OF APPEALS

KEVIN A. UNCK) REPOSE BRIEF OF APPELLANT
APPELLANT) Case # 20150043
)
Vs.)
)
WORKFORCE APPEALS BOARD)

Workforce Appeals Board
P.O. Box 45244
Salt Lake City, Utah
84145-9244
Appellee

Kevin A. Unck
P.O.Box 111
Plymouth, Utah
84330
Attorney Pro Se Appellant

TABLE OF CONTENTS

| | Page # |
|---------------------------|--------|
| TABLE OF AUTHORITIES | 1 |
| STATEMENT OF JURISDICTION | 1 |
| STATEMENT OF ISSUES | 1 |
| DETERMINATIVE PROVISIONS | 1 |
| STATEMENT OF CASE | 1 |
| RELEVANT FACTS | 1 |
| SUMMARY OF ARGUMENT | 1 |
| ARGUMENT | 2 |
| ADDENDUM | |
| A. | |
| B. | |
| CONCLUSION | 2 |

TABLE OF AUTHORITIES

STATUTES
35A-4-403 (1) (c)
35A-4-405 (3) (a) (b) (i) (ii) (c) (i) (ii) (iii) (iv) (vi) (vii)

STATUTES
35A-406-(5) (a) (b)

STATEMENT OF JURISDICTION

Pursuant of 35A-1-302 (3). If an order is appealed to the Court of Appeals after the party appealing the order has exhausted all administrative appeals, the Court of Appeals has jurisdiction to review, reverse, or annul any order of the Workforce Appeals Board, or to suspend or delay the operation or execution of the order of the Workforce Appeals Board being appealed.

STATEMENT OF ISSUES

1. Is the Claimant/Appellant able and available for fulltime work as required by the provisions of 35A-4-403(1)(c).
2. Does the evidence show the Petitioner knowingly withheld material information in order to obtain benefits that he was not entitled to the provisions of 35A-4-405(3)(a)(b)(i)(ii)(c)(i)(ii)(iii)(iv)(v)(vi)(vii).
3. To allow the Petitioner's evidence of being trained to work as a Paralegal ?

DETERMINATIVE PROVISIONS ARE NONE

STATEMENT OF CASE

In a decision dated November 10, 2014, Case#14-A-08559, the Administrative Law Judge affirmed the decision of the Department of Workforce Services and denied unemployment insurance benefits to the Claimant/Appellant effective October 13, 2013, on the grounds he was not able and available for fulltime work.

In a separate decision dated November 10, 2014 Case# 14-A-08559, the Administrative Law Judge affirmed the Department's decision holding the Claimant/Appellant knowingly withheld material information from the Department by failing to accurately report he was not able and available for fulltime work for the weeks ending November 2, 2013 through May 3, 2014 in order to obtain benefits to which he was not entitled. The Administrative Law Judge's decision, therefore, denied benefits for those weeks from October 12, 2014, until September 19, 2015, and required the Claimant/Appellant to repay \$20,592.00 to the Utah Unemployment Compensation Fund.

RELEVANT FACTS

1. The Appellant did make a claim for benefits with respect to that week, October 14, 2013, in accordance with any rules the Department may prescribe. The Claimant/Appellant did register for work at and thereafter continued to report at an employment office in accordance with any rules the Department may prescribe.
2. The Claimant/Appellant did submit new evidence in the Appellate Brief as the Board introduced this in their decision without any chance for **REBUTTAL**.

SUMMARY OF ARGUMENT

The Claimant/Appellant did perform an active worksearch in good faith, and was able and available for fulltime work in which he could perform. The Claimant/Appellant did search for work as an entry level Paralegal, and the diplomas of being qualified should be entered in.

ARGUMENT

The Claimant/Appellant did in fact searched for work as required and was done in good faith effort. Having to drive up to over 100 miles a day searching for work. It is fact that when I took the job as a commercial truck driver , worked for two days, then learned that one cannot drive a commercial vehicle across state lines by using insulin to control type two diabetes,had this job been local I would have been kept employed.

The Board argues that the new evidence submitted in the Brief of Appellant should be thrown out, stating that Appellant had plenty of time to submit it. It was the Board who did not ask if I had been trained to be Paralegal, and it was they who stated, that it is apparent that I lacked the skills to be a Paralegal. Then why then did they not ask the same question, if I was trained to be a commercial truck driver ? The Claimant/Appellant did not have to produce diplomas to be a Paralegal, unless I was asked to produce them, which they did not, it was the Board who opened the door for Claimant/Appellant to rebut this in this Court. The diplomas should be allowed. It is up to the potential law office to have them presented to them.

CONCLUSION

The Claimant/Appellant believes he has demonstrated that there are doubts to the three elements of fraud as in the Appellate Brief. The Claimant/Appellate did not knowingly withheld any information from the Department, did no wrong doing with his knowledge , always felt he was doing the right thing. Believed he acted in good faith. I still feel that the Board could have reached a different decision. Pursuant to the provisions of 35A-4-406 (5)(a)(b), which states (a) if any person has received any sum as benefit under this chapter to which under redetermination or decision he was not entitled, and it has been found that he was without no fault in the matter, he is not liable to repay the but shall be liable to have the sum deducted from any future benefits payable to him.(b) The Division may waive recovery of the overpayment if it is shown to the satisfaction of the Division that the Claimant has the inability to meet more than the basic needs of survival for an indefinite period of lasting several months or more. The evidence is in the Brief of the Appellant. The Appellant prays that the Court will reverse, amend, suspend or modify the division of the Workforce Appeals Board.

Respectfully Submitted this 27 day of May,2015

Kevin A. Unck

Attorney Por Se



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the foregoing, RESPONSE BRIEF , by depositing the same in the U.S> Mail Postage prepaid on this 27 day of May, 2015.

WORKFORCE APPEALS BOARD

P.O. Box 45244

Salt Lake City, Utah

84145-9244

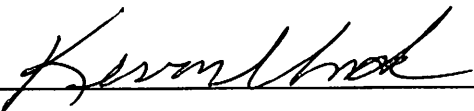
UTAH COURT OF APPEALS

450 South State Street

P.O. Box 140230

Salt Lake City, Utah

84114-0230

By 

Dated this 27 day of May 2015

