

2002

Marcos Lorenzo v. Department of Workforce Services, Workforce Appeals Board : Reply Brief

Utah Court of Appeals

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Unknown.

Recommended Citation

Reply Brief, *Lorenzo v. Department of Workforce*, No. 20020084 (Utah Court of Appeals, 2002).
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IN THE UTAH COURT OF APPEALS

MARCOS LORENZO,

Claimant/Petitioner,

v.

DEPARTMENT OF WORKFORCE
SERVICES, WORKFORCE APPEALS
BOARD,

Respondent.

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REPLY BRIEF OF THE
PETITIONER

CASE NO. 20020084-CA

PRIORITY NO. 7

REPLY BRIEF OF THE PETITIONER

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ORAL ARGUMENT IS REQUESTED

FII
Utah Court of Appeals

AUG 14 2002
Paulette Staggs
Clerk of the Court

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ARGUMENT

POINT ONE

THE BOARD'S INTERPRETATION OF LAW
SHOULD BE REVIEWED UNDER A
CORRECTION OF ERROR STANDARD

The Board incorrectly states the appropriate standard of review. Petitioner is seeking relief under Utah Code Ann. § 63-46b-16(4)(b) and (d), which allows judicial review of an agency action beyond the jurisdiction conferred by any statute,

or an agency's erroneous interpretation or application of the law. The appropriate standard of review for cases falling under subsection (4)(b) was addressed by the Utah Supreme Court in Bennion v. ANR Production Co., 819 P.2d 343 (Utah 1991). Bennion held that challenges under subsection (4)(b) present questions of general law appropriate for correction of error standard, with no deference to agency interpretation. Id. at 349.

The Utah Supreme Court addressed the appropriate standard of review for cases falling under subsection (4)(d) in Savage Industries v. State Tax Com'n., 811 P.2d 664 (Utah 1991). Regarding subsection (4)(d) Savage held:

This incorporates the correction of error standard previously applied by the Utah courts in cases involving agency interpretations of law. This incorporation of the correction of error standard is confirmed by looking at the legislative history of the UAPA . . . This approach is mandated whether arrived at under the terms of the UAPA or under the holdings of our prior case law.

Id. at 669-670.

The Board misapplies Utah case law in support of its argument that the reviewing court should grant deference to the Board's interpretation of law. These misapplications, found on pages one and two of its brief, result from quotations taken out of context. The Board confuses the standard of review issue when it states on page one of its brief:

Because the claimant does not dispute the underlying material facts, the Board's decision "calls for application of statutes and administrative rules to a specific factual situation." *SOS Staffing Servs., Inc. V. Workforce Appeals Bd.*, 1999 UT App 210, ¶8, 983 P.2d 581 (quoting *Professional Staff Mgmt., Inc. v. Department of Employment Sec.*, 953 P.2d 76,79 (Utah Ct. App. 1998)).

This is a misrepresentation of SOS. In SOS the issue presented to the court concerned the Board's interpretation of Utah Code Ann. § 35A-4-405(1)(a) providing that, "A claimant is ineligible for benefits if 'the claimant left work voluntarily without good cause.'" Because the claimants did not dispute having left the employ of SOS Staffing Services voluntarily, the court determined the degree of deference would be less than if those facts had been in dispute. The court found in SOS that:

Here, because "proper application of the Employment Security Act and the relevant rules 'requires little highly specialized or technical knowledge that would be uniquely within the [Board's] expertise' . . . this court will review the agency's decision 'with only moderate deference.'" [citations omitted].

The Board misinterprets SOS in its relevancy to the present case. The lack of dispute of the underlying facts, in the present case, cannot lead to the conclusion that the present case is "like" SOS, in that, here, petitioner is concerned only with the issue of jurisdiction, and interpretations of law related to that issue.

Likewise, the Board's reliance upon King v. Industrial Comm'n., 850 P.2d 1281 (Utah Ct. App 1993) is misplaced. In King, the court reviewed prior case law

concerning the question of finding “explicit” or “implied” grants of discretion to the agency. In that case the court concluded that under a specific portion of the Utah Workers’ Compensation Act, Utah Code Ann. § 35-1-45 (1988), there was no express or implied grant of discretion given to the agency. The court held in that case:

[B]ecause the language is not broad and expansive but is narrow and mandatory and is subject to construction by traditional rules of statutory construction, the statute does not contain an implicit grant of discretion. We, therefore, review the Industrial Commission’s action . . . for correctness.

Professional Staff Mgmt., Inc. v. Department of Employment Sec., 953 P.2d 76, 79 (Utah Cr. App. 1998) is similarly taken out of context, and is irrelevant in the present case.

The Board next cites Morton Intern., Inc. V. Auditing Div., 814 P.2d 581 (Utah 1991) in support of its argument that a “degree of deference” should be given to the Board if its decision is within “the bounds of reasonableness.” The Board misrepresents Morton by taking statements out of context, and instead presents another case which does not support the Board’s view. Morton addressed the issue whether standards of review developed in prior case law had been altered after the adoption of the Utah Administrative Procedure Act. The Court found that Utah courts had developed “three levels of review in connection with agency action”:

First, agencies’ findings of fact were granted considerable deference and

would not be disturbed on appeal if supported by substantial evidence (footnote omitted). Second, a correction-of-error standard, giving no deference to agencies decisions, was used to review agencies' rulings on issues the court characterized as concerning general law (footnote omitted). Examples of issues characterized as questions of general law include . . . rulings concerning the agency's jurisdiction or statutory authority . . . and rulings concerning interpretation of statutes unrelated to the agency (footnote omitted).

Id. at 585. The court also held in Morton:

[I]n granting judicial relief when an 'agency has erroneously interpreted or applied the law,' the language of section 63-46b-16(4) clearly indicates that absent a grant of discretion, a correction-of-error standard is used in reviewing an agency's interpretation or application of a statutory term (footnote omitted).

Id. at 588. Citing Morton, the court comments in Ferro v. Utah Dept. of Commerce, 828 P.2d 507, 514 n.12 (Utah App. 1992):

We note for purposes of determining the appropriate standard of review that a grant of discretion to an agency to make factual findings . . . should not be confused with a grant of discretion to interpret a given statutory term. Since the authority to make factual findings is often granted to agencies, such a misinterpretation would require deference to agencies in virtually every case—thereby causing the exception to consume the rule set forth in *Morton*. In the present case, the petitioner seeks relief from the court only in regards to the Department's interpretation of law as it relates to its assumption of jurisdiction for the purpose of imposing civil penalties. Because the present case is restricted to this single issue, Utah case law supports that a correction of error standard of review is appropriate.

POINT TWO

THE RULE OF “PLAIN LANGUAGE” DOES NOT SUPPORT THE BOARD’S INTERPRETATION OR APPLICATION OF THE EMPLOYMENT SECURITY ACT

The Board argues that the “plain meaning” of Utah Code Ann. § 35A-4-406 supports an interpretation of law which grants to itself continuous jurisdiction for the purpose of imposing the civil penalty described in Utah Code Ann. § 35A-4-405(5)(c). The Board’s argument is a specious application of the fundamental rule of statutory construction as articulated in *Zoll & Branch, P.C. v. Assay*, 932 P.2d 592, 594 (Utah 1997):

The fundamental rule of statutory construction is that statutes are generally to be construed according to their plain language. Unambiguous language in the statute may not be interpreted to contradict its plain meaning. *Salt Lake Therapy Clinic v. Frederick*, 890 P.2d 1020 (1995) (and cases cited therein).

The above rule, that language may not be interpreted contrary to its “plain meaning,” is related to another established rule of statutory construction, that “a word is known by the company it keeps.” This latter principle has been restated through other maxims, one of which is “expressio unius est exclusio” (“expression of one thing is the exclusion of the other”).¹ Under this doctrine, the Utah Supreme Court

¹*Hansen v. Wilkinson*, 658 P.2d 1216, 1217 (Utah 1983).

cites remarks in Sutherland Statutory Construction that “it probably is not wholly inaccurate to suppose that ordinarily when people say one thing they do not mean something else.”² Applying this principle, it must be noted that the *actual words* found in Utah Code Ann. § 35A-4-406 do not include the language, or refer to the language providing the specific “civil penalty” described in Utah Code Ann. § 35A-4-405(5)(c). Under the maxim of *expressio unius est exclusio alterius*, the “meaning” of “civil penalty,” as defined under Utah Code Ann. § 35A-4-405(5)(c)³ cannot be included as an integral part Utah Code Ann. § 35A-4-406, because the word “civil penalty” is not said. To do so would impute to the legislature that when they say (and define) one thing, i.e. “benefits,”⁴ or “repayment of benefits,” they really mean something else entirely.

The Board cites, on page ten of its brief, Decker v. Industrial Commission, 533 P.2d 898,899 (Utah 1975). This case is irrelevant here. The petitioner has not asked the Board to “reduce or forgive any part of the penalty.” The petitioner argues only

²Id., citing 2A C. Sands, Sutherland Statutory Construction, § 47.01 (4th ed. 1973).

³“an amount equal to the benefits the claimant received by direct reason of his fraud”

⁴ Defined under § 35A-4-201(3) “Benefits” means the money payments payable to an individual as provided in this chapter with respect to the individual’s unemployment.

that the Board lacks jurisdiction to impose the civil penalty provided under Utah Code Ann. § 35A-4-405(5)(c), and that the Board misinterprets the Utah Employment Security Act when it attempts to bring the civil penalty imposed under Utah Code Ann. § 35A-4-405(5)(c) under the provisions for continuing jurisdiction under Utah Code Ann. § 35A-4-406(2)(a) and (4)(a).

POINT THREE

ADDING OR DELETING WORDS TO THE EMPLOYMENT SECURITY ACT IS NOT SUPPORTED BY UTAH CASE LAW OR RULES OF STATUTORY CONSTRUCTION

The Board argues on page ten of its brief that “The plain language of a statute is to be read as a whole, and its provisions interpreted in harmony with other provisions in the same statute and ‘with other statutes under the same and related chapters’” (citations omitted). The Board confuses this “plain language” argument by next requesting, on page eleven of its brief, that the court engage in a type of statutory interpretation that requires remedies provided only under traditional rules of statutory construction, i.e., the insertion or incorporation of words or concepts not explicitly stated in the statute. Utah courts apply these rules of statutory construction only when statutes are found ambiguous: “When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.”

Luckau v. Board of Review of the Industrial Commission Of Utah, 840 P.2d 811, 815 (Utah App. 1992). The rule is stated in Ferro v. Utah Dept. of Commerce, 828 P.2d 507, 510 (Utah App. 1992):

If a statute is ambiguous, however, we apply traditional rules of statutory construction under the assumption that the Legislature was operating under such rules. We also assume that the Legislature expected the agency to likewise apply the traditional rules of statutory interpretation. No deference is therefore given to the agency's interpretation if an otherwise ambiguous statute may be interpreted in accordance with traditional rules of interpretation. *See Morton* at 589.

Rather than a “plain language” argument, the Board’s argument suggests an interpretation of Utah Code Ann. § 35A-4-406 which would, in effect, insert the words “civil penalty” under subsection 2(a) alongside the word “benefits,” and under subsection 4(a) alongside the provision requiring repayment of benefits. (Adding the words under only (2)(a) or only (4)(a) would leave the section ambiguous). Adding the words “civil penalty” into Utah Code Ann. § 35A-4-406(2) and (4)(a) would, indeed, correct any assumed oversight or inadvertent omission by the legislature, however, Utah courts have denied the power to do so. In Luckau v. Board of Review of the Industrial Commission Of Utah, 840 P.2d 811, 815 (Utah App. 1992) the court held:

In interpreting a statute, courts should avoid adding to or deleting from statutory language, unless absolutely necessary to “make it a rational statute.” 2A Norman J.

Singer, *Sutherland Statutory Construction* § 47.38 (5th ed. 1992); see *Resolution Trust Corp. v. Lightfoot*, 938 F.2d 65, 66-67 (7th Cir. 1991).

. . . .We presume that the legislature used each word advisedly and gave effect to each term according to its ordinary and accepted meaning. We must be guided by the law as it is When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction. *Nelson v. Salt Lake County*, 905 P.2d 872, 875 (Utah 1995) (citations omitted).

POINT FOUR

RULES OF STATUTORY CONSTRUCTION DISTINGUISH INDEPENDENT SECTIONS FROM DEPENDENT SUBSECTIONS

The Board next argues that the terms ‘benefits’ or ‘repay the sum’ under Utah Code Ann. § 35A-4-406(2)(a) and (4)(a) should be interpreted as effectively incorporating the meaning of “civil penalty” as defined under Utah Code Ann. § 35A-4-405, because “it is clear from the way the relevant, correlated statutes are worded, that benefit overpayments and their accompanying civil penalties are interrelated and are to be addressed together.” (See page eleven of brief). The Board provides no examples of “relevant, correlated statutes,” citing only a different section of the Employment Security Act. The section cited, Utah Code Ann. § 35A-4-305, provides for the collection of monies owed to the unemployment insurance fund through civil collection actions, after the employer or claimant defaults on monies owed. The court

in Zoll addressed the appropriate rule of statutory construction to be applied when determining the relationship between sections and subsections within a statute:

. . . The distinction between a subsection and an independent section of a statute is that the subsection, by its nature, is placed within a context and thereby limited to the degree that the independent section is not. 2A Norman J. Singer, *Sutherland Statutory Construction* § 47.01 (5th ed. 1992) (footnote omitted).

Zoll & Branch, P.C. v. Assay, 932 P.2d 592, 594 (Utah 1997). In United States v. Butchelder, 581 F2d 626 (CA7 1978) the court held, “If the meaning of any particular phrase or section standing alone is clear, no other section or part of the act may be applied to create doubt.” In the present case, Utah Code Ann. § 35A-4-305 should not be interpreted as providing a template for statutory construction of every other section of the Employment Security Act. Utah Code Ann. §§ 35A-4-406, 35A-4-405 and 35A-4-305 are separate sections within the statute, are clear standing alone, and create no disharmony amongst their own or other provisions in the same statute. On the other hand, Utah Code Ann. § 35A-4-406(2) and (4) should be interpreted through, and limited by, the context of the section they occur within. Thus, “continuing jurisdiction” in subsection (2) is granted over “benefits” and the “repayment of benefits” as provided in subsection (4).

POINT FIVE

“BENEFITS” ARE DEFINED BY THE EMPLOYMENT SECURITY ACT

The term ‘benefits,’ as used within the sentence “Jurisdiction over benefits shall be continuous,” under Utah Code Ann. § 35A-4-406(2)(a) and (4)(a) is defined under Utah Code Ann. § 35A-4-201(3):

“Benefits” means the money payments payable to an individual as provided in this chapter with respect to the individual’s unemployment.

*Sutherland Statutory Construction*⁵ states:

As a rule a definition which declares what a term means is binding upon the courts. Limitations have been noted. For example, if the definition is arbitrary, creates obvious incongruities in the statute, defeats a major purpose of the legislation or is so discordant to common usage as to generate confusion, it should not be used . . . A definition which declares what a term means, on the other hand, excludes any meaning that is not stated.

In the present case, the meaning of the term ‘benefits’ has been declared by the Employment Security Act. The definition is not arbitrary nor discordant to common usage, does not create incongruities in the statute, and does not defeat a major purpose of the legislation.⁶ “Benefits,” or their “repayment,” should, therefore, not

⁵2A Norman J. Singer, *Sutherland Statutory Construction* § 47.07 (6th ed. 2000).

⁶Leaving “benefits” defined as provided in the statute necessarily entails disgorgement of any benefits procured by the claimant’s wrongdoing, thereby

be redefined to conceptually incorporate the meaning of the term ‘civil penalties’ as the term is defined in Utah Code Ann. § 35A-4-405(5)(c). Incorporating the civil penalty provided under Utah Code Ann. § 35A-4-405(5)(c) into the meaning of “benefits” or their repayment, would, itself, create an arbitrary and incongruous result. The term ‘benefits,’ and their repayment, as it presently occurs withing Utah Code Ann. § 35A-4-406 is logical within the context of that section:

35A-4-406(2)(a) Jurisdiction over benefits shall be continuous

35A-4-406(4)(a) Any person who, by reason of his fraud, has received any sum as benefits (i.e., **“money payments payable to an individual with respect to the individual’s unemployment”**) under this chapter to which he was not entitled shall repay the sum to the division for the fund.

The insertion of the term ‘civil penalties,’ as that term is used under Utah Code Ann.

§35A-4-405(5)(c) would rewrite the section to read:

35A-4-406(4)(a) Any person who by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall repay the sum (**“money payments payable to an individual with respect to the individual’s unemployment and, an amount equal to the benefits the claimant received by direct reason of his fraud”**) to the division for the fund.

The present wording under Utah Code Ann. § 35A-4-406(4)(a), requiring any person to “repay the sum” he has “received” (as benefits) is, thereby, redefined to require

encouraging honesty in reporting and a replenishment of the fund.

“repayment” of an amount of money which was at no time “received” by the person (the civil penalty doubles the sum actually received). Because the term ‘repay’ cannot be credibly redefined to include an amount never paid, “repay” would need to be deleted in subsection (4)(a). After ridding subsection (4)(a) of the word “repay,” it must next be assumed that “benefits” under subsection (2)(a) can be sufficiently broadened in its definition under Utah Code Ann. § 35A-4-201(3), to include the civil penalty provision under Utah Code Ann. § 35A-4-405(5)(c), thereby, allowing the “continuing jurisdiction” sought by the Board. The necessary redefining of subsections (4)(a) and (2)(a) to accomplish the Board’s goals, generates incongruities and, therefore, confusion in the provisions under Utah Code Ann. § 35A-4-406.

POINT SIX

RULES OF STATUTORY CONSTRUCTION DO NOT SUPPORT AN “ASSOCIATION OF WORDS”

The Board’s argues on page eleven of its brief, that provisions under Utah Code Ann. § 35A-4-305 make it clear that “benefit overpayments” and “civil penalties” are “linked,” “interrelated,” and “are to be addressed together.” Whether or not “civil penalties” and “benefit overpayments” are “linked,” or in what way the terms are “interrelated” and should be “addressed together,” requires an analysis through, and an application of, the rule of statutory construction for the “associations

of words.” Involved specifically, are certain other doctrines included within the statutory construction principle that “a word is known by the company it keeps.” This rule of statutory construction is elaborated upon in Hansen v. Wilkinson, 658 p.2d 1216,1217 (Utah 1983):

The concisely expressed principle that “a word is known by the company it keeps” has been restated throughout the jurisdictions of this country [footnote omitted] under the maxims of (1) “noscitur a sociis”⁷ (2) “ejusdem generis”,⁸ . . . The first of these doctrines postulates that “the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it,” the second that “general and specific words which are capable of an analogous meaning, being associated together, take color from each other so that the general words are restricted to a sense analogous to the less general.” [Citations omitted.] In 2A C. Sands, Sutherland Statutory Construction, §47.16, et seq., (4th ed. 1973) the first of these doctrines is explained as follows: “When two or more words are grouped together, and ordinarily have a similar meaning, but are not equally comprehensive, the general word will be limited and qualified by the special word.” The second of the above doctrines is commonly applied, so that “where general words are subjoined to specific words, the general words will not include any objects of a class *superior* to that designated by the specific words.”. . [Citations omitted.]

One implication, in an analysis of the Board’s argument, is that the meaning of ‘benefit overpayments,’ as the broader term, should be interpreted in a way which includes ‘civil penalty,’ as the specific term. Drawing such an association between

⁷ “It is known from its associates.”

⁸ “Of the same class.”

the words “benefit overpayments” and “civil penalty” under the maxim of *noscitur a sociis*, requires that “benefit overpayments” be grouped within a category of things with similar meanings which also includes the words “civil penalty,” and that the former term is limited and qualified by, the later term. If the words “benefit overpayments” and “civil penalties” are thus considered, established rules of statutory construction require an examination whether the definition of “civil penalty” is understood as applying to things of the same kind as “benefit overpayments,” and also whether “benefit overpayments” include any object of a class superior to “civil penalty.”

While the “*repayment* of benefits,” may be thought of as a type of “penalty” in its broad sense, a “civil penalty” is not a type of “benefit overpayment.” A “civil penalty” is “a sum of money which the law exacts payment of by way of punishment for doing some act which is prohibited or for not doing some act which is required to be done.”⁹ A “benefit overpayment” is the receiving of payment of money to any person to which, under a redetermination or decision, he has been found not entitled.¹⁰ Within the meaning of the Employment Security Act, a “benefit overpayment” may occur through agency error, an individual’s error, an individual’s “fault,” or an

⁹Black’s Law Dictionary 1020 (Fifth ed. 1979).

¹⁰Utah Code Ann. § 34A-4-406(4).

individual's "fraud." Therefore, the term 'benefit overpayment,' within the context of the Employment Security Act, belongs to a class comprised of different kinds of things than a "civil penalty," and the term 'benefits overpayment' cannot, therefore, be limited by the term 'civil penalty.' The two terms cannot be "grouped" together, because they do not have a similar meaning. Thus, the doctrine of *noscitur a sociis* does not apply

Under the maxim of *ejusdem generis*, the words "benefit overpayments" and "civil penalty" must, being associated together, take color from each other so that "benefit overpayments" is restricted to a sense analogous to "civil penalty," and does not include any objects of a class superior to that designated by "civil penalty." As argued above, "benefit overpayments" is not capable of an analogous meaning with "civil penalty." Additionally, the class of objects belonging to the category of "benefit overpayments" are also of a much broader designation, than the term 'civil penalty' can encompass.

Sutherland Statutory Construction states that, "Where a general term appears with no enumeration, with other general terms, or with specific terms not suggesting a class, the rule of *ejusdem generis* does not apply."¹¹ In the present case, the maxim

¹¹2A Norman J. Singer, *Sutherland Statutory Construction* § 47:20 (6th ed. 2000).

cannot, therefore, apply, because the general term ‘benefit overpayments’ appears with no enumeration. The context within which the term ‘civil penalty’ occurs, suggests more of “general term” or a “specific term not suggesting a class.”¹²

POINT SEVEN

THE LEGISLATIVE PURPOSE OF THE EMPLOYMENT SECURITY ACT DOES NOT REQUIRE THE BOARD’S PRESENT INTERPRETATION

The Board argues on page twelve of its brief, that granting it continuous jurisdiction for the purpose of imposing the civil penalty provided for under Utah Code Ann. § 35A-4-405(5)(c) is required to protect the fiscal soundness of the unemployment insurance fund. The court in Morton states that:

Questions of legislative intent are considered questions of law, which are reviewed for correctness under our prior case law (footnote omitted) and section 63-46b-16(4)(d). Therefore, when a legislative intent concerning the specific question at issue can be derived through traditional methods of statutory construction, the agency’s interpretation will be granted no deference and the statute will be interpreted in accord with its legislative intent.

¹²A more logical example of word association under these doctrines would be the association of “farm products” and “eggs.” A more complete list of “farm products”—“eggs,” “apples,” “wheat” . . . would limit “farm products” to things of that nature. A “dog” bred to guard the farm, and exacting more from thieves than the “return of the products” (perhaps analogous to a civil penalty which exacts more than a “repayment of benefits”) would not properly be included within the category of “farm products.”

Morton Intern., Inc. V. Auditing Div., 814 P.2d 581, 588, 599 (Utah 1991): the court cites Savage Industries v. State Tax Com’n., 811 P. 2d 664, 666, 670 (Utah 1991); Hurley v. Board of Review, 767 P.2d 524, 527 (Utah 1988).

As argued above, Utah Code Ann. § 35A-4-406 already serves to protect the fund through the necessary disgorgement of any benefits procured by the claimant’s wrongdoing. (See footnote 6). This continuing legal obligation under Utah Code Ann. § 35A-4-406(4)(a) for any person who has received any sum by reason of his fraud, to repay that sum, serves as a “penalty,” thereby furthering the legislative purpose of encouraging honesty in reporting.

It should not be forgotten that the legislature has expressed a desire to place a limitation of one year upon the state’s power to impose civil penalties through Utah Code Ann. § 78-12-29(3). These restrictive legislative provisions further another important legislative purpose: the statute of limitations prevents the state from pursuing individuals for civil penalties long after the date of the alleged wrongdoing, when these allegations have become all but impossible to defend against.

CONCLUSION

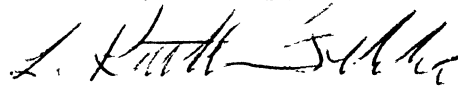
This court should find that neither “plain language” arguments, nor established rules of statutory construction, as applied throughout Utah case law, support the

Board's interpretation or application of the Employment Security Act. There is no permissible interpretation of Utah Code Ann. § 35A-4-406(2)(a) or (4)(a) through which the Department of Workforce Services is provided with continuing jurisdiction for the purpose of imposing a civil penalty under Utah Code Ann. § 35A-4-405(5)(c). Because the Utah Employment Securities Act does not provide a special case where a "different limitation is prescribed by statute," as required under the statute of limitations, and because the Department failed to bring its action within the prescribed one-year period provided for, it lacked jurisdiction to impose the civil penalty.

The Workforce Appeals Board should be reversed on the issue of its assumption of jurisdiction for the purposes of imposing the civil penalty.

RESPECTFULLY SUBMITTED this 8th day of August, 2002.

UTAH LEGAL SERVICES, INC.
Attorneys for Appellants



BY: L. Kathleen Ferro

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing

REPLY BRIEF to:

Department of Workforce Services
Workforce Appeals Board
P.O. Box 45244
Salt Lake City, Utah 84145-0244

Dated this 8th day of August, 2002.

A handwritten signature in black ink, appearing to read "L. Keith Gillette", is written over a horizontal line.