1983

Mary A Schoen v. Board of Review of The Industrial Commission of Utah, Department of Employment Security : Defendant's Brief

IN THE SU
OF THE S

MARY A. SCHOEN,

Plaintiff/Appellant,

vs.

BOARD OF REVIEW OF THE INDU
COMMISSION OF UTAH, DEPART
EMPLOYMENT SECURITY,

Defendant/Respond

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Appeal from a
State
and

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MARY A. SCHOEN,

Plaintiff/Appellant,

vs

Case No. 19345

BOARD OF REVIEW OF 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, as amended, seeking judicial review of a decision of the Board of Review of the Industrial Commission of Utah, which denied unemployment benefits to the Plaintiff, Mary A. Schoen, pursuant to Section 35-4-4(c), Utah Code Annotated 1953, as amended (Pocket Supplement, 1981), on the grounds that during certain weeks for which she claimed benefits she failed to demonstrate a "good faith" active effort to seek employment as required for eligibility. This disqualification established an overpayment liability in the amount of $498, pursuant to Section 35-4-6(d), Utah Code Annotated 1953.

DISPOSITION BELOW

Plaintiff was denied unemployment benefits by a Department Representative pursuant to Section 35-4-4(c), Utah Code Annotated 1953, as amended (Pocket Supplement, 1981), effective January 2, 1983 and continuing, on the grounds her work search did not meet minimum standards for eligibility. This decision established an overpayment liability in the amount of $664 for the weeks ended January 8, 1983 through February 5, 1983. Plaintiff appealed to an Appeal Referee who modified the decision of the Department Representative to deny benefits from January 2, 1983 through January 28, 1983, and reduced the overpayment liability to $498, by decision dated April 4, 1983, Case No. 83-A-1553. Plaintiff appealed to the Board of Review of the Industrial Commission of Utah, which by decision issued June 29, 1983, in Case No. 83-A-1553, 83-BR-246, affirmed the decision of the Appeal Referee.

RELIEF SOUGHT ON REVIEW

Plaintiff seeks reversal of the Defendant's decision and asks the Court to find that Plaintiff is entitled to unemployment compensation benefits from January 2, 1983 until she is no longer otherwise eligible. Defendant seeks affirmance of the decision of the Board of Review.

STATEMENT OF FACTS

Plaintiff, hereinafter referred to as claimant, became unemployed at the end of October, 1982 and reopened an existing claim for benefits. R.0047

at the conclusion of her benefit year the claimant filed a new claim for benefits effective December 5, 1982. R.0082 The claimant certified on her claim for benefits that she received a Claimant Guide explaining her rights and responsibilities and that she understood that she must personally seek work and be able and available to accept full-time work. R.0082. The Claimant also received a form entitled "Responsibilities While Claiming Benefits," on which she was instructed to make three new in-person contacts each week. R.0084 Near the end of January the claimant received an Eligibility Review Notice asking her to complete a form and report to the local unemployment office on February 3, 1983 at 9:00 a.m. to discuss her prospects of re-employment and review her continuing eligibility for unemployment compensation. R.0075 The form the claimant was asked to complete instructed her to complete the form accurately and advised her that her eligibility for unemployment insurance would be based in part on the information she provided and that she was to bring the form with her when she reported for her interview. The report asked a number of questions and also required the claimant to report all contacts she made to seek work in the prior 30 days. R.0079-0080 On that form the claimant reported that she made two employer contacts during the week ended January 8, 1983, two employer contacts the week ended January 15, 1983, and two employer contacts the week ended January 22, 1983. R.0080 The form also shows that the claimant contacted three employers the week ended January 29 and four employers the week ended February 5, 1983. R.0080 The claimant verified the foregoing work-search efforts in her testimony

before the Appeal Referee. R.0056 Some of the employer contacts made by the claimant were in person, some were by telephone and some were by written letter or resume. R.00560057, 0078,0080

On February 14, 1983 the Department Representative issued a decision denying benefits to the claimant beginning January 2, 1983 and continuing, on the grounds the claimant's work search did not meet minimum standards for eligibility. This decision also created an overpayment in the amount of $664 for benefits received during the period January 2 through February 5, 1983. R.0077 The claimant appealed the decision of the Department Representative on February 17, 1983. R.0071 Notice of hearing was issued to the claimant on March 15, 1983, (R.0070) and a hearing was held before an Appeal Referee on March 22, 1983. R.0042 The Appeal Referee issued her decision in the matter on April 4, 1983, modifying the disqualification to include the weeks ended January 8, 15 and 22, 1983 and allowing benefits beginning January 23, 1983. The decision of the Appeal Referee also modified or reduced the overpayment to $498. R.0038-0040

ARGUMENT

POINT I

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

This Court has consistently held that where the findings of the Commission and the Board of Review are supported by evidence, they will not be

established. Martinez v. Board of Review, 477 P. 2d 587 (Utah, 1970). In the case of Members of Iron Workers Union of Provo v. Industrial Commission, 139 P. 2d 208, 211 (Utah, 1943), this Court held:

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

With specific reference to the question of availability, this Court has stated:

> It is our duty to examine the record and to affirm the decision unless we can say as a matter of law that the conclusion on the question of "available for work" was wrong because only the opposite conclusion could be drawn from the facts. Bocke v. Wiesley, 420 P. 2d 44,46 (Utah, 1966); citing Salt Lake County v. Industrial Commission, 120 P. 2d 321 (Utah, 1940).

POINT II

THE BOARD OF REVIEW OF THE INDUSTRIAL COMMISSION DID NOT ERR IN DETERMINING THAT APPELLANT FAILED TO MEET THE WORK SEARCH REQUIREMENTS FOR ELIGIBILITY AND THUS WAS NOT AVAILABLE FOR WORK AND THIS DETERMINATION IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

The claimant contends that the commission has applied in a rigid and inflexible manner the so-called 2-3 new in-person contact rule. That requirement is, however, only an interpretive guideline that is considered viable in most occupations and areas, but is not applied rigidly or inflexibly in all cases, nor has it been adopted as a formal general rule of adjudication.

Section 35-4-4(c) requires, by direct statutory language, that a claimant for unemployment insurance make an active and good faith effort to secure employment each week that he files for benefits. The burden is upon the claimant to prove he has met the requirements and conditions for benefit payments, including of course the requirement that he has made the expected work search effort. Rule A71-07-2:1.b(1), General Rules of Adjudication, Able and Available. Although the Utah Employment Security Act does not require that a claimant be engaged in a search for work for any given number of hours each day or week to prove he is engaged in an active good faith search, this Court has held that a claimant must be unequivocally exposed to the labor market and must show more than a passive willingness to gain employment. Denby v. Board of Review, 567 P. 2d 626 (Utah, 1977); Bocke, supra. Thus, the question of whether or not a claimant has engaged in a good faith active search for work is a mixed question of law and fact.

With Utah unemployment compensation claims as high as 35,000 during a particular week, and in recognition of the difficulty involved in the prompt adjudication and payment week by week of benefits, the Legislature gave to the Industrial Commission regulatory powers specifying that claims must be filed in accordance with rules and regulations adopted by the Commission.

Rule A71-07-2:2.c.(7), General Rules of Adjudication, supra, provides:

> Inasmuch as each claimant is advised of his rights and responsibilities at the beginning of his claim series and since he certifies to eligibility requirements when continuing his claims, he should have sufficient knowledge to put him on notice that certain subjects might be

> important factors relative to a claim for benefits. The claimant is then under obligation to make proper inquiry and failure to do so constitutes fault.

Specifically concerning a claimant's availability for work, the General Rules of Adjudication, supra, Rule A71-07-2:1b(1) provides as follows:

> To meet this eligibility requirement, the claimant must establish that he or she is able to work, is available for work, and as proof of availability, that he is seeking work in a manner consistent with the existing conditions of the labor market in his area. He must do this with respect to each week for which he files a claim.

When the claimant filed her new claim for benefits in December 1982, she certified that she had received the Unemployment Insurance Claimant Guide and further certified to the following statement on the claim form:

> I understand that I must personally seek work and be able and available to accept full-time work. I have received the Unemployment Insurance Claimant Guide explaining my rights and responsibilities. R.0082

The Unemployment Insurance Guide provides:

> Make an active effort to look for work. An active effort means that you should contact several employers in person each week who would hire people in your occupational field. R.0053 (Emphasis added)

The claimant also signed and received a copy of a form entitled "Responsibilities While Claiming Benefits," which provides:

> Seek work - I must make an active effort to look for full time work each week and will follow up on any job leads I am given by Job Service. An active effort, in part, means I will personally contact employers who would hire people in my occupation. Failure to do so may be considered as evidence that I do not have a genuine desire to find immediate employment. R.0081 (Emphasis added)

This Court affirmed that the Department has the authority to make interpretations of the Employment Security Act in areas of mixed questions of fact and law. In the case of Salt Lake City Corporation v. Board of Review of the Industrial Commission of Utah and Marian Lynch, 657 P. 2d 1312, (Utah, 1982), this Court stated:

> In administrative law cases, our scope of review of an agency's decisions as to legal questions and questions of mixed law and fact is generally broader than our scope of review of questions of fact. On most questions of statutory construction, with some exceptions, our review is plenary with no deference accorded the administrative determination. That standard is particularly applicable with respect to constitutional law issues. However, where the language of a statute indicates a legislative intention to commit broad discretion to an agency to effectuate the purposes of the legislative scheme, we will not substitute our judgment for that of the agency as long as the commission's interpretation has "warrant in the record" and a "reasonable basis in the law." Unemployment Compensation Commission v. Aragon, 329 U.S. 143, 153-54 (1946); National labor Relations Board v. Hearst Publications, Inc., 322 U.S. 111, 131 (1944). Furthermore, where agency decisions deal with technical questions which call for the exercise of expertise, born either of a technical background and training or long experience in dealing with numerous, similar problems, we also accord deference to an agency interpretation because of the necessity to recognize discretion commensurate with the nature of the issue, as defined by the general purposes of the Act, although the latitude accorded may vary with the nature of the issue. SEC v. Chenery Corp., 332 U.S. 194 (1946), provides an example. The statutory language required that before the Commission could give approval to a plan of reorganization of a utility holding company, the Commission was required to determine among other things that the plan was "fair and equitable." 332 U.S. at 204. The standard of review under such legal criteria was based on deference to the "informed discretion" of the Commission and permitted reversal of the Commission's ruling only upon a plain abuse of its discretion. Id. at 208. [657 P. 2d, at 1316.]

The minimal requirement placed upon claimants to contact several potential employers each week in person is reasonable and is supported by case law from other jurisdictions. For example, in Carr v. Administrator, Unemployment Compensation Act, 223 A. 2d 313 (Conn., 1966), the Commission was held to have acted reasonably in finding that the claimant had not made a reasonable effort to look for work when he contacted only one or two places a week. See also Jones v. Administrator, Unemployment Compensation Act, 228 A. 2d 807 (Conn., 1966); Redd v. Texas Employment Commission, 431 S.W. 2d 16 (Tx., 1968). And in Steinberg v. Fusari, 364 F. Supp. 922 (Conn., 1973), cited on pages 22 and 24 of Plaintiff's Brief, the United States District Court for the District of Connecticut stated, contrary to the assertions of the Plaintiff, as follows:

> [I]f a stated number of employers must be visited, a claimant's acknowledgement that he had seen fewer than the required number would eliminate the factual controversy and provide an adequate basis for denial of benefits.

Considering the purpose of the work search requirement and the requirement of Denby v. Industrial Commission, Supra, that a claimant must be unequivically exposed to the labor market, the instruction to the claimant that she contact three employers each week is reasonable and consistent with the generalized work search requirements contained in the Employment Security Act and in the General Rules of Adjudication. It should be noted in this regard that the claimant's testimony that she was instructed to contact employers either in person or by resume was accepted by the Appeal Referee and the Board

of Review and that even though the Department Representative disqualified the claimant for failure to make three in-person contacts, the Appeal Referee corrected that error. R.0039,0050

The evidence in this matter is clear. The claimant was clearly instructed to contact at least three employers each week. R.0050,0081 Although the claimant denied receiving the "Claimant Guide," she acknowledged that she understood she must personally seek work and that she must be able and available for full-time work. R.0052-0053 It is interesting to note that although the claimant holds a Masters Degree from a major university, and although she acknowledged a general understanding of the requirement to personally seek work (R.0052-0053), she showed a remarkable lack of interest and concern in the specific requirements and instructions which were given to her at the time she filed her claim. This is evidenced by her testimony in response to questions by the Appeal Referee concerning her understanding of the work search requirement:

> Referee: Allright. Now. Then, that same day you signed Exhibit Number Two, which is your responsibility statement while claimant benefits. And again the hit at the work search here. And your's in particular has been marked through and it says three new in-person. Do you recall that being put on there?
>
> Schoen: No. I just know that I signed it. The whole idea was to get in and get out because it was really frustrating. I just felt humiliated that I had to come in here again.
>
> Referee: Well . . .
>
> Schoen: And no, I didn't read it. I'll admit to that. I didn't read it. I just affixed my signature to it.

Despite verbal instructions acknowledged by the claimant to seek work by resume and personal contact, and written instructions requiring at least three contacts per week, the record shows that the claimant made only one in-person contact and one telephone contact during the week ended January 8, 1983; two in-person contacts during the week ended January 15, 1983; and two contacts by letter during the week ended January 22, 1983. R.0056,0080 This fact situation appears similar to the situation in the case of Hurd v. Board of Review, Utah, 638 P. 2d 544 (1981), wherein this Court held that a claimant who had contacted only three businesses for the purpose of finding work during a 30-day period, was not entitled to unemployment compensation because his efforts showed only "a passive search for work" even though he alleged in his appeal to the Board of Review that he had made "numerous phone calls pursuant to want ad listings." Id, 638 P. 2d, at 545.

Plaintiff relies on Gocke, supra, as support for her contention that her work search was reasonable and adequate. See Pages 9 and 10 of Plaintiff's Brief. However, Gocke is distinguishable in that the claimant therein was not advised as to the extent of work search she should be making. The claimant in Gocke relied on the "Handbook for Claimants" which, when read literally, "doesn't require any affirmative action by a claimant other than registration." Id, at 46. In the present case, however, there can be no doubt that the claimant was advised as to the extent of work search she should be making and there can be no doubt that she knew, or should have known, what constituted an active effort to secure employment. The limited contacts made by

the claimant herein are inconsistent with an unequivical exposure to the labor market, and justify the denial of benefits.

POINT III

THE INTERPRETATION OF SECTION 35-4-4(c), U.C.A. 1953, AS AMENDED, UTILIZED BY THE INDUSTRIAL COMMISSION FOR UNEMPLOYMENT COMPENSATION ELIGIBILITY IS CONSISTENT WITH THE LAW AND IS REASONABLE.

The claimant has misperceived the 2-3 new in-person contact requirement. Contrary to claimant's assertion that the requirement is applied rigidly and inflexibly, it is utilized as a guideline by Department Representatives in determining eligibility. The claimant refers in her brief to an inconsistency in the application of the in-person contact requirement stating:

> This illustrates the absurdity of this concrete and inflexible minimum contact rule. The rule fails to address the issue of the diligence and reasonableness of the claimant's job search activities, and is being applied inconsistently by the Department. Plaintiff's Brief, at 8.

The claimant further contends that the words of the statute and the purpose of the Act requires a subjective analysis of each individual claimant's acts. That is precisely what the Department has done in the instant case. The claimant has offered no proof and cited no evidence that the Department has applied a 2-3 new in-person contact requirement universally to all claimants. Such evidence does not exist because it has not occurred. In fact, the rule adopted by the Department and appended to claimant's brief also does not create a concrete and inflexible rule, as alleged by claimant. Rather, as stated in the Archivist's announcement, it re-defines "good faith effort"

to find work as including, but not limited to, in-person contacts with employers, and creates a rebuttable presumption of failure to make an active work search when a claimant fails to contact a specific number of employers after being so instructed by the local office. The claimant contends that the Department has failed to address the issue of diligence and reasonableness of her work search activities and that she has made a good faith effort to find a job given her circumstances. The Department, however, has concluded that the claimant's contacting of only two employers during each of the weeks in question is less than diligent or reasonable. A requirement to contact a specific number of employers each week, as a minimal effort, is not applied by the Department as an inflexible rule, but rather, as a guideline for evaluating a claimant's work search efforts. The necessity for one who claims the benefits of the Unemployment Insurance Program to expose herself to the labor market by a combination of in-person contacts and other work search efforts is obvious, and the Department's requirements of such efforts is reasonable and consistent with the intent and purposes of the Utah Employment Security Act.

POINT IV

THE PROCEDURE BY WHICH THE COMMISSION TERMINATED UNEMPLOYMENT BENEFITS TO THE CLAIMANT DID NOT VIOLATE DUE PROCESS.

Claimant contends in her Brief at Point IV that she was denied unemployment benefits without prior notice and without opportunity for a Goldberg v. Kelly type of hearing before termination of benefits. In support of this contention claimant cites the cases of Steinburg v. Fusari, supra, and

California Department of Human Resources Development v. Java, 402 U.S. [illegible] (1971). Plaintiff explains the Fusari case as holding that the "[illegible] interview" system did not provide sufficient procedural due process protections for unemployment insurance claimants. A cursory review of the District Court Opinion would lead one to that conclusion. The District Court held that the Connecticut procedures for determining unemployment insurance eligibility violated due process as follows:

> . . . because (a) a property interest has been denied (b) at an inadequate hearing (c) that is not reviewable de novo until an unreasonable length of time. 364 F. Supp., at 937-938.

The Connecticut legislature thereafter amended the review provisions of its unemployment insurance law. The U. S. Supreme Court remanded the case to the District Court to determine whether the new provisions improved the time factor sufficiently to make the entire process legally sufficient, stating:

> Prompt and adequate administrative review provides an opportunity for consideration and correction of errors made in initial eligibility determinations. 95 S.Ct., at 540.

Thus a careful reading of the opinion of the Supreme Court in the Fusari case clearly shows that the Court was primarily concerned with the length of delay in obtaining proper review of a denial of benefits. This concern was subsequently specifically recognized by the Supreme Court in the case of Matthews v. Eldridge, 96 S.Ct. 893 (1976), citing Fusari at 906. Eldridge, a disability insurance case, involved the precise issue to which Plaintiff speaks in Point IV of her Brief, that is, whether an individual claiming

government benefits under an entitlement program may be denied such benefits without a Goldberg v. Kelly type hearing.

In analyzing the issue presented, the Eldridge court set forth the factors to be considered in determining the amount of due process required in such cases, as follows:

> Accordingly, resolution of the issue whether the administrative procedures provided here are constitutionally sufficient requires analysis of the governmental and private interests that are affected. [Citations omitted] More precisely our prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official actions; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or a substitute procedural safeguard; and finally, the government's interests, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [Citing Goldberg v. Kelly]

The Court then proceeded to analyze the individual interest involved in the Eldridge case, stating:

> Only in Goldberg has the court held that due process requires an evidentiary hearing prior to a temporary deprivation. It was emphasized there that welfare assistance is given to persons on the very margin of subsistence; "the crucial factor in this context - a factor not present in the case of . . . virtually anyone else whose governmental entitlements are ended - is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits. 397 U.S., at 264, 90 S.C. at 1018 (Emphasis in original)." Eligibility for disability benefits, in contrast, is not based upon financial need. Indeed, it is wholly unrelated to the worker's income or support from many other sources, such as earnings of other family members, workmen's compensation awards,

> court claims awards, savings, private insurance, public or private pensions, veterans' benefits, food stamps, public assistance, or the "many other important programs both public and private, which contain provisions for disability payments affecting a substantial portion of the work force. . . ." [Footnotes and Citations omitted. 96 S.Ct., at 905]

After considering the other two factors previously referred to, the court concluded that an evidentiary hearing is not required prior to the termination of disability benefits.

The holding that pre-termination evidentiary hearings are not required was extended to unemployment insurance cases by Graves v. Meystrik, 425 F.S. 40 (E.D. Mo.), affirmed 431 U.S. 910, 97 S.Ct. 2164, 53 L.Ed. 2d 220 (1977). See also Torres v. New York State Department of Labor, 333 F.S. 431 (S.D.N.Y., 1971), affirmed 405 U.S. 949, 92 S.Ct. 1185, 31 L.Ed. 2d 228 (1972).

Plaintiff's reliance on California Department of Human Resources Development v. Java, supra, is likewise misplaced. The Java case involved a procedure whereby an employer could sit back and await an initial determination of a claimant's eligibility for unemployment benefits. If the determination found the claimant eligible, the employer could then appeal, thus causing the termination of the claimant's benefits pending the outcome of the employer's appeal. Such appeals took a median of seven to ten weeks to resolve. The U.S. Supreme Court held in Java that the suspension of unemployment benefits for such a lengthy period, after an initial determination of eligibility, violated due process. In the instant case the termination of the claimant's benefits was not initiated by an appeal of another party, but rather was

based on the claimant's own statements in an eligibility review. (R.0079-0080). The Eligibility Review is an administrative device by which unemployment insurance claimants are periodically asked to prove their eligibility consistent with Rule A71-07-2:1.b.(1), General Rules of Adjudication, supra. The claimant was notified of the eligibility review and was advised as to the purpose of the review and the potential for disqualification. (R.0075, R.0079-0080) She appeared as requested by the local office. R.0055, 0078-0080 Thereafter the claimant received a notice of denial of benefits which she appealed in a timely manner to an Appeal Referee. (R.0077,0071) As required by Section 35-4-10, U.C.A., 1953, the claimant was given a full evidentiary hearing and a decision was issued to her within 49 days from the date she was denied benefits (R.0077) and only 46 days from the date of her appeal to the Referee. R.0071 This procedure afforded the claimant the full due process of law required by Eldridge.

Claimant cites the case of California Department of Human Resource Development v. Java, supra, in support of her contention that the decision making process violates the "payment when due" requirement. The claimant further cites the lower court decision in Steinburg v. Fusari, supra, and refers to the number of days involved in that case between the date of the original denial and the date of an appeal hearing. In response to the concern of the U. S. Supreme Court with respect to time lapse for review of administrative appeals, as expressed in the Java case, the Department of Labor in August 1972, promulgated time-lapse requirements. See 20 C.F.R.

650. Specifically, 20 C.F.R. 650.4(b) requires with respect to lower authority appeals, that is appeals before an Appeal Referee or Administrative Law Judge, that 60 percent be decided within 30 days of the date of appeal and 80 percent be decided within 75 days from the date of appeal. Claimant has not offered at any stage of the appeal proceedings any evidence to show that the Department of Employment Security has failed to meet the Federally mandated time-lapse requirements. Indeed, the Department asserts that for many years, and particularly over the last year, it has exceeded the Federal time-lapse requirement for lower authority appeals.

CONCLUSION

There is substantial, competent evidence that the claimant's work search effort during the period for which she was disqualified was less than reasonable. The claimant has failed to demonstrate that she was unequivically exposed to the labor market, as required by this Court. In order to monitor the claimant's work search efforts, she was asked to attend an Eligibility Review. The notice sent to the claimant advised her of the purpose of the review and further informed her that the information she provided could be the basis for a denial of unemployment benefits. Upon receiving her denial of benefits the claimant had the right, which she exercised, to a fair hearing before an impartial Appeal Referee. Although the time lapse from the date of the claimant's appeal to the date of her hearing exceeded 30 days, there has been no offer of evidence that the Department has failed to meet

the federally mandated requirement of deciding 60 percent of all lower authority appeals within 30 days from the date of appeal. Therefore, the decision of the Appeal Referee should be affirmed and the procedure utilized by the Department for the review, hearing and deciding of cases such as the claimant's should be upheld by this Court.

Respectfully submitted this _____ day of October, 1983.

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CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Defendant's Brief to JOHN L. BLACK, JR., UTAH LEGAL SERVICES, INC., Attorney for Plaintiff, Mary A. Schoen, 637 East Fourth South, Salt Lake City, Utah 84102, this _____ day of October, 1983.

_____