

1983

## **Albert G. Perkes (Self Employed), State Insurance Fund, And Second Injury Fund v. Albert G. Perkes : Brief of Defendant**

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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ALBERT G. PERKES (SELF	:	
EMPLOYED), STATE INSURANCE	:	
FUND, and SECOND INJURY	:	
FUND,	:	
Plaintiffs,	:	Case No. 19071
-vs-	:	
ALBERT G. PERKES,	:	
Defendant.	:	

-----

BRIEF OF DEFENDANT

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Salt Lake City, Utah 84114

**FILED**

AUG 12 1983

\_\_\_\_\_  
Clerk, Supreme Court, Utah

IN THE SUPREME COURT  
OF THE STATE OF UTAH

-----  
ALBERT G. PERKES (SELF :  
EMPLOYED), STATE INSURANCE :  
FUND, and SECOND INJURY :  
FUND, :  
                                Plaintiffs, :                        Case No. 19071  
                                - vs - :  
ALBERT G. PERKES, :  
                                Defendant. :  
-----

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TABLE OF CONTENTS

	<u>Page</u>
Nature of the Case . . . . .	1
Disposition by the Industrial Commission . . . . .	1
Relief sought by Defendant . . . . .	1
Statement of Facts . . . . .	2
Argument . . . . .	2
CONCLUSION . . . . .	2

STATUTES CITED

State Code Annotated Sections 37-1-97, 99 (1953) . . . . .	1
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STATEMENT OF FACTS

The facts set forth by plaintiffs' Brief are in the main the correct facts.

ARGUMENT

The defendant in this case at all times was totally and completely honest by reason of his testimony, and plaintiffs' argument that fraud could occur may be discarded in this case, in that it would have been to the defendant's advantage to have said simply that the accident occurred at the time of the strangulated hernia, but defendant testified that the initial accident had occurred in November, 1980, while he was repairing a tire.

It is especially important to be aware of the fact that on the day on which the defendant came home from the hospital, he returned to work and did not make any attempt to malingering, collect benefits and/or collect permanent partial disability.

The defendant was self-employed, the accident was reported, and therefore, the employer (himself) had received notice of said injury, and based on the medical evidence and testimony at the administrative hearing, the Administrative Law Judge having taken all evidence into consideration, determined that in fact proper notices were given, and that plaintiffs should pay the medical expenditures set forth, as well as the \$22.72 for lost time.

CONCLUSION

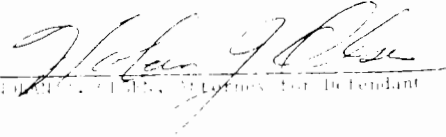
The Administrative Law Judge and the Utah State Industrial Commission's determination should be upheld, requiring plaintiffs to pay the medical expenses and the \$22.72.

DATED this 28 day of July, 1983.

Respectfully submitted,

OLSEN & OLSEN

BY:

  
NELSON J. OLSEN, Attorney for Defendant

MAILING CERTIFICATE

I hereby certify that a true and correct copy of the foregoing  
Brief of Defendant was sent this 11 day of Aug, 1983,  
to the following:

Fred R. Silvester  
BLACK & MOORE  
Attorneys for Plaintiff  
700 Ten Broadway Building  
Salt Lake City, Utah 84101

Frank V. Nelson  
Asst. Attorney General  
State Capitol Building  
Salt Lake City, Utah 84114

Gilbert Martinez  
Second Injury Fund  
110 East 300 South  
Salt Lake City, Utah 84111

IN THE SUPREME COURT OF THE  
STATE OF UTAH

ANTONE E PURCELL

Plaintiff/Appellant.

vs.

DEPARTMENT OF EMPLOYMENT SECURITY

Defendant/Respondent.

Case No.19072

BRIEF OF APPELLANT

Appeal From Judgement of the Board of  
Review, The Industrial Commission of  
Utah Unemployment Compensation Appeals  
Board of Review members being Milton E.  
Saathoff, Darcie H. White, and Ken  
Gardner.

Antone E. Purcell  
P.O. Box 437  
Duchesne, Utah 84021

Plaintiff/Appellant

K. Allen Zabel  
1234 South Main Street  
P.O. Box 11600  
S.L.C. Utah 84147

Legal Counsel for Defendant/  
Respondent

**FILED**

MAY 24 1983

Clerk, Supreme Court, Utah

TABLE OF CONTENTS

	<u>Page</u>
NATURE OF THE CASE . . . . .	1
DISPOSITION OF BOARD OF REVIEW . . . . .	1
RELIEF SOUGHT ON APPEAL. . . . .	2
STATEMENT OF FACTS. . . . .	2
ARGUMENT. . . . .	3
POINT I	
THE DEPARTMENT OF EMPLOYMENT SECURITY CLAIM THAT PLAINTIFF/APPELLANT FRAUDED THEM BY NOT TELLING THEM HE WAS GOING TO SCHOOL. . . . .	3
POINT II	
DEFENDANT/RESPONDENT FOUND OWN MISTAKE IN DECEMBER 1982, EIGHT MONTHS AFTER CLAIMS WERE FILED OUT AND BENEFITS RECEIVED.. . . .	4
POINT III	
CONTRADICTIONS CAUSING THE PLAINTIFF/APPELLANT TO WONDER WHAT HE SHOULD DO ABOUT FILING FOR BENEFITS, DURING COURT ACTIONS. . . . .	4
CONCLUSION . . . . .	5



IN THE SUPREME COURT OF THE STATE OF UTAH

ANTOINE E. PURCELL

Plaintiff/Appellant.

vs.

Case No. 19072

DEPARTMENT OF EMPLOYMENT SECURITY

Defendant/Respondent

---

BRIEF OF APPELLANT

NATURE OF THE CASE

This is an action of Plaintiff/Appellant challenging charges upon Plaintiff/Appellant by Defendant/Respondent, Department of Employment Security for their claim that Plaintiff/Appellant frauded them by not telling them he was going to school.

DISPOSITION OF BOARD OF REVIEW

The case was never in a court therefore this the finding of a Board of Review. The case was first heard by an appeals referee an employee of the Employment Security office. It was then heard by members of the Board of Review of the Industrial Commission. The board determined that the Plaintiff/Appellant frauded them under issues of Utah Employment Security Act 33-4-5(e), Utah Code Annotated 1953. Which states "Whether the claimant willfully made a false statement or failed to report a material fact to obtain benefits;".

The Plaintiff/Appellant appealed threw all board of reviews and judgement was the same threw all boards, they all found in favor of the Defendant/Respondent.

RELIEF SOUGHT ON APPEAL

Plaintiff/Appellant seeks to have the board of reviews judgement reversed and allowed to receive benefits denied him from September 19, 1982 threw April 23, 1983. Plaintiff/Appellant is willing to repay the four weekly benefits in the amount of \$484.00. If a signed apology from the Department of Employment Security, for accusation of being dishonest, is sent to Plaintiff/Appellant, Antone Everett Purcell. Also reimbursement of moneys spent for copies of Docketing Statement, Response for motion of Dismissal and Plaintiff/Appellant brief also postage which amounts to about \$40.00.

STATEMENT OF FACTS

The Department of Employment Security claims that Plaintiff/Appellant, Antone E. Purcell, did not tell them he was going to school therefore was not eligible for benefits. Plaintiff/Appellant told the the representative at the Roosevelt office he was attending school. Therefore did not willfully withhold information for purposes of receiving benefits. The Department of Employment Security did not tell Plaintiff/Appellant that he was not eligible to receive benefits while attending school because he did earn the majority of his earnings while attending school in previous quarters, until December of 1982. Therefore the Plaintiff/Appellant, Antone E. Purcell did not knowingly withhold information to draw benefits.

Also while Plaintiff/Appellant has been appealing this case the Department of Employment Security has been sending the Plaintiff/Appellant collection notices of over payment due on February 1, 1983, form 28-B on March 4, 1983, form L-2. After receiving these notices Plaintiff/Appellant contacted Jane Stenhenson a representative in the Roosevelt office and was told to disregard notices since this case

was before the court. Then on May 10, 1983 Plaintiff/Appellant received a notice of warrant for delinquent payment, form WL. This shows lack of communication between divisions of this department and incompetence on the part of the employees.

#### ARGUMENT

##### POINT I

THE DEPARTMENT OF EMPLOYMENT SECURITY CLAIM THAT PLAINTIFF/APPELLANT FRAUDED THEM BY NOT TELLING THEM HE WAS GOING TO SCHOOL.

The Plaintiff/Appellant told the representative at the Roosevelt office he was attending school, he was then told to continue to fill out the weekly benefit cards the same way he was previously doing, that he would later be given a paper, form 680G, see response to motion of summary dismissal for complete form, to fill out the hours he was attending school. The Plaintiff/Appellant did not ever receive this form to fill out. Later his school schedule changed from morning classes to afternoon classes, at this time he decided that he could not continue to file for unemployment benefits, because of his changing schedule he did not feel he could take a full time job, at the time.

## POINT II

DEFENDANT/RESPONDENT FOUND OWN MISTAKE IN DECEMBER 1982, EIGHT MONTHS AFTER CLAIMS WERE FILED OUT AND BENEFITS RECEIVED.

In December during a phone conversation the Plaintiff/Appellant was told that he was not even entitled to the benefits drawn while attending school, because he did not make the majority of his earnings while attending school during previous quarters. This was some eight months after Plaintiff/Appellant discontinued filing for benefits. The Plaintiff/Appellant feels that this should have been found when he told the office that he was attending school not eight months later, therefore the Defendant/Respondent was lacking on that part.

## POINT III

CONTRADISTINCTIONS CAUSING THE PLAINTIFF/APPELLANT TO WONDER WHAT HE SHOULD DO ABOUT FILING FOR BENEFITS, DURING COURT ACTIONS.

Due to the contradistinctions in information given the Plaintiff/Appellant he does not know where he stands on past weeks filings. One of the papers that the Plaintiff received said that he should continue to file for benefits, for the weeks he felt he was entitled for benefits, this is found on the front page of form 617-A refer to motion of summary dismissal. The contradistinction to this is found in exhibit 2, refer to motion of summary dismissal. This exhibit explains that Plaintiff/Appellant was disqualified for benefits for thirty-one weeks, commencing September 19, 1982 and ending April 23, 1983, see exhibit for complete reading. In Plaintiff/Appellants case he quite filing for benefits in April 1982 because of changing schedules at school. In the first telephone hearing in September 1982 Plaintiff/Appellant was still

out of work, he should have been told at this time to begin filing for benefits he felt he was entitled. The Plaintiff/Appellant was not told to file during the time this case was in court till the first week in April 1983. The Plaintiff/Appellant is now expected to remember the places he searched for work the past eight months and there addresss and telephone numbers.

#### CONCLUSIONS


The Plaintiff/Appellant urges the court to render a judgement that would be proper and just according to the information given by the Plaintiff/Appellant on this particular case knowing that according to the Constitution of the United States of America, that all persons are innocent until proven guilty by the courts of law. Each case is an individual case and should be judged accordingly. I respectfully would like to thank the most honorable justices for taking the time and effort to hear this case so that justice might be served.

Respectfully submitted this 23rd day of May, 1983.

  
Antone E. Purcell  
Antone E. Purcell

#### CERTIFICATE OF MAILING

I hereby certify that two copies of the foregoing Brief were mailed to K Allen Zabel, Legal Counsel for the Defendant/ Respondent, P. O. Box 11600, Salt Lake City, Utah 84147 by placing same in the United States mails, postage prepaid this 23rd day of May, 1983.

  
Antone E. Purcell  
Secretary



Utah Department

A DIVISION OF THE INDUSTRIAL COMMERCIAL BANK OF UTAH

02/01/83

100 South Main Street  
Salt Lake City, Utah 84143

A. Dudley Gardner  
Assistant Director

ANTONE E PURCELL  
P O BOX 116  
DUCHEсне UTAH

84021

NOTICE OF OVERPAYMENT DUE

IN ACCORDANCE WITH THE PROVISION OF THE UTAH EMPLOYMENT SECURITY ACT, YOU WERE DULY NOTIFIED OF A DISQUALIFICATION ASSESSED AGAINST YOU UNDER THEACT.

THIS DISQUALIFICATION RESULTS IN AN OVERPAYMENT TO YOUR UNEMPLOYMENT BENEFIT ACCOUNT IN THE AMOUNT OF \$968.00. DEMAND IS HEREBY MADE FOR THE REPAYMENT OF THIS AMOUNT WITHIN 10 DAYS OF DATE OF THIS NOTICE. MAKE CHECKS PAYABLE TO UTAH UNEMPLOYMENT COMPENSATION FUND AND RETURN ONE COPY OF THIS NOTICE WITH YOUR REMITTANCE TO:

UTAH DEPARTMENT OF EMPLOYMENT SECURITY  
P. O. BOX 11900  
SALT LAKE CITY, UTAH 84147

THE UTAH EMPLOYMENT SECURITY ACT PROVIDES THAT ANY INDIVIDUAL WHO HAS RECEIVED UNEMPLOYMENT BENEFITS TO WHICH HE OR SHE IS NOT ENTITLED, BY REASON OF HIS OR HER FRAUD OR OWN FAULT, SHALL BE LIABLE TO REPAY SUCH SUM TO THE UTAH UNEMPLOYMENT COMPENSATION FUND. IF, AFTER DUE NOTICE, THE INDIVIDUAL FAILS TO REPAY SUCH BENEFITS IMPROPERLY RECEIVED, THE AMOUNT DUE SHALL BE COLLECTIBLE BY LEGAL ACTION.

IF YOU HAVE ANY QUESTIONS RELATIVE TO THIS NOTICE, OR WISH TO ARRANGE FOR INSTALLMENT PAYMENTS PLEASE COMMUNICATE WITH US IMMEDIATELY.

RESPECTFULLY,

COLLECTION UNIT  
(PHONE: 833-2235)



Utah Department  
of Employment Security

A DIVISION OF THE INDUSTRIAL COMMISSION OF UTAH  
03/04/83

Walter T. Axelgard  
Chairman

Stephen M. Hadley  
Commissioner

Milton E. Saathoff  
Commissioner

ANTONE E PURCELL  
P O BOX 116  
DUCHESNE UTAH

84021

BENEFIT OVERPAYMENT ACCOUNT

OUR RECORDS DISCLOSE THAT YOU HAVE FAILED TO REPLY  
TO OUR (NOTICE OF OVERPAYMENT DUE) MAILED TO YOU REGARDING  
YOUR BENEFIT OVERPAYMENT ACCOUNT IN THE AMOUNT OF \$968.00

YOU HAVE OBTAINED MONEY TO WHICH YOU ARE NOT ENTITLED  
AND REPAYMENT OF THESE FUNDS MUST BE ARRANGED FOR IMMEDIATELY.  
THIS OVERPAYMENT IS COLLECTIBLE BY LEGAL ACTION.

WE ARE WILLING TO WORK OUT SOME ARRANGEMENT WITH YOU  
ON THE REPAYMENT OF THIS ACCOUNT. WE HAVE AN INSTALLMENT PLAN.

RESPECTFULLY,

COLLECTION UNIT  
(PHONE: 533-2235)



Utah Department

531-

A DIVISION OF THE UTAH DEPARTMENT OF REVENUE

05/10/33

Walter A. Garoner  
Administrator

Walter A. Garoner  
Milton E. Garoner

ANTONE E PURCELL  
P O BOX 437  
DUCHESNE UTAH  
84021

NOTICE OF WARRANT

NOTICE IS HEREBY GIVEN THAT A WARRANT FOR DELINQUENT BENEFIT OVERPAYMENT IN THE AMOUNT OF \$968.00 WAS ISSUED BY THIS DEPARTMENT ON 05/10/33 TO THE CLERK OF DUCHESNE COUNTY TO BE Docketed AGAINST YOU.

THIS WARRANT HAS THE FORCE AND EFFECT OF A JUDGMENT AGAINST YOU, IS A LIEN AGAINST YOUR REAL PROPERTY, AND CONSTITUTES A WRIT AUTHORIZING THE SHERIFF OF YOUR COUNTY TO SEIZE AND SELL SUFFICIENT OF YOUR PERSONAL PROPERTY TO PAY THE BENEFIT OVERPAYMENT. THE DEPARTMENT MAY ALSO INTERCEPT YOUR STATE TAX REFUND TO APPLY UPON THIS OBLIGATION.

UNLESS WE RECEIVE YOUR REMITTANCE IN THE ABOVE AMOUNT WITHIN TEN (10) DAYS OF THE DATE OF THIS NOTICE WE SHALL PROCEED WITH LEGAL ACTION ON THE WARRANT.

THIS WARRANT WAS ISSUED PURSUANT TO SECTION 35-4-17(C), UTAH CODE ANNOTATED 1953.

RESPECTFULLY,

COLLECTION UNIT  
(PHONE: 533-2235)

*Marlene*



INDUSTRIAL COMMISSION OF UTAH  
DEPARTMENT OF EMPLOYMENT SECURITY  
APPEALS SECTION

P.O. Box 11600  
Salt Lake City, Utah 84147

PLEASE BE PROMPT

OFFICE OF HEARING

CLAIMANT:

EMPLOYER:

Antone E. Purcell  
P. O. Box 116  
Duchesne, Utah 84021

SOCIAL SECURITY NO. 531 54 6142

DOCKET NO. 82-A-4166 EB

YOU ARE NOTIFIED TO APPEAR ON TUESDAY, October 12, 1982 at 4:00 p.m.

AT Job Service Office, Roosevelt, Utah

TO GIVE EVIDENCE AT A HEARING ON AN APPEAL FILED September 20, 1982, by the

CLAIMANT  EMPLOYER FROM A DECISION DATED September 17, 1982

SPECIAL INSTRUCTIONS:

NOTE TO LOCAL OFFICE: Please notify Claims Adjudicator J. Stephenson to be available for the hearing.

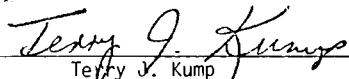
THE ISSUES ARE:

- \_\_\_ 4(a) Whether the claimant has made a claim for benefits in accordance with regulations;
- \_\_\_ 4(c) Whether the claimant is able to work and is available for work;
- \_\_\_ 5(a) Whether the claimant voluntarily left work without good cause; a denial of benefits would be contrary to equity and good conscience, and the claimant has demonstrated a continuing attachment to the labor market;
- \_\_\_ 5(b)(1) Whether the claimant was discharged for an act or omission in connection with employment which was liberate, willful or wanton and adverse to the employer's rightful interests;
- \_\_\_ 5(c) Whether the claimant has failed without good cause to properly apply for or accept available, suitable work, and claimant's demonstration of a continuing attachment to the labor market;
- XX 5(e) Whether the claimant willfully made a false statement or failed to report a material fact to obtain benefits;
- \_\_\_ 5(g) Whether the claimant is registered at and attending an established school or is on vacation during or between successive quarters or semesters;
- \_\_\_ 6(c) Whether the appeal was filed within 13 days; if not, be prepared to give reasons for delay;
- \_\_\_ 6(d) Whether the claimant by reason of his/her fault received any sum of benefits to which he/she was not entitled and must repay \_\_\_\_\_

For references are to the Utah Employment Security Act 35-4, Utah Code Annotated 1953)

Hand Mailed September 30, 1982  
mjm

Office Roosevelt

  
Terry J. Kump  
Appeals Referee

The purpose of the hearing is to secure complete evidence on the questions involved in this case, and you should appear at the hearing prepared accordingly. If you desire witnesses, you should arrange with them for their appearance. Essential witnesses refusing to appear may be called by subpoena. (For additional details - Unemployment Insurance Appeals Brochure.)

You may appear at the hearing without representation as it is the Referee's responsibility to assist the parties in developing the facts in the case. However, if you wish you may be represented by an attorney or anyone else you select.

If you need an interpreter, please so inform this office immediately.

In the event of your failure to appear, the decision in the matter will be issued on the basis of the facts available to the Utah Appeals Section. If your failure to appear is deemed to be due to good cause preventing your appearance, you should, before or within seven days after the original date of hearing, request in writing that a hearing be rescheduled. Your request should set forth your reason for not appearing at the original hearing and should be directed to the nearest Job Service Center or the Appeals Referee, Box 11600, Salt Lake City, Utah 84147. If good cause for nonappearance is found to exist, a new hearing date will be set and written notices will be mailed to your last known address.