

1983

Antone E. Purcell v. Board Of Review of the Industrial Commission Of Utah, Department Of Employment Security : Respondent's Brief

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ANTONE E. PURCELL,

Plaintiff,

vs.

BOARD OF REVIEW OF THE
COMMISSION OF UTAH PERSONNEL
EMPLOYMENT SECURITY,

Defendant.

REPLY

Appeal from a decision of the
State of Utah, Personnel
and the Board of Review.

ANTONE E. PURCELL
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FILED

JUN 23 1983

Appellant, Pro Se

Clerk, Supreme Court, Utah

Attorney General
Board of Review

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IN THE SUPREME COURT
OF THE STATE OF UTAH

ANTONE E. PURCELL,

Plaintiff/Appellant,

vs.

Case No. 19072

BOARD OF REVIEW OF THE INDUSTRIAL
COMMISSION OF UTAH, DEPARTMENT OF
EMPLOYMENT SECURITY,

Defendant/Respondent.

RESPONDENT'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, which seeks judicial review of a decision of the Board of Review of the Industrial Commission of Utah, which affirmed the decision of the Appeal Referee which denied unemployment insurance benefits to the Appellant, Antone Purcell, for a 35-week period pursuant to Section 35-4-5(e) of the Utah Employment Security Act (hereafter, the Act). The Referee further held that a \$968 overpayment must be repaid by the Appellant to the Department of Employment Security (hereafter, the Department) in accordance with the provisions of Section 35-4-6(d) of the Act.

DISPOSITION BELOW

A representative of the Department in a decision dated September 17, 1982, disqualified the Appellant from receiving unemployment insurance benefits for a period of 35 weeks pursuant to Section 35-4-5(e) of the Act, on the grounds that the Appellant knowingly withheld material information to receive benefits to which he was not entitled. The Appellant was further assessed an overpayment in the amount of \$968 for the benefits received during the disqualification period. (R.0052-0053) The Appeal Referee in a decision dated December 12, 1982, affirmed the decision of the Department Representative. (R.0026-0027) The Appeal Referee's decision was affirmed by the Board of Review in a decision dated March 9, 1983, in Case No. 82-A-4166, 82-BR-642. (R.0019)

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the decision of the Board of Review and the Appeal Referee. Respondent seeks affirmance of such decision.

STATEMENT OF FACTS

The Appellant filed a claim for extended unemployment insurance benefits effective March 7, 1982. (R.0026) His weekly benefit amount was \$121.

The Appellant filed weekly unemployment insurance benefit claim forms for four consecutive weeks ending March 27 through April 17, 1982, and was paid \$484 based on the information supplied on these forms. (R.0055-0056)

Further claims were not filed after April 17, 1982, because the Appellant felt he would be unable "to go to school and to work." (R.0034)

The Appellant registered for and attended classes as a full-time student at Utah State University Educational Center from March 22 through May 28, 1982. (R.0054) He failed, however, to report this school attendance on the weekly claim forms filed by certifying "No" to the question: Did you attend any school or training? (R.0055-0058) In explaining this discrepancy to the Department Representative and the Appeal Referee, the Appellant admitted attending school, but asserted he had reported his attendance to a local office representative in Duchesne who told him to fill out the claim cards in the same manner he had previously filled them out. (R.0034,0038,0052) The claimant further testified that the office representative was supposed to give him a form on which he was to report his school hours and his availability for work. (R.0034,0052) At the hearing the Appellant was unable to recall when the local office representative had allegedly told him to fill out the cards in the same manner he always had. (R.0038) It appears that Appellant is asserting that he reported his school attendance the first time he filed a claim form for extended benefits and that he was then told to fill out the cards as he previously had, i.e. during his regular benefit period, May 29 to December 23, 1981, while he was apparently not attending school. (R.0020,0021)

The Appellant testified, however, that he had filed for unemployment insurance benefits previously while attending school and had reported such on his weekly claim cards. (R.0039)

The local office representative testified that she was present in the office on each of the four Wednesdays the Appellant filed his weekly claim forms (R.0036,0037), that she would be the one that helped him fill out the claim forms (R.0034), and that she does not instruct claimants how to fill out their cards, but only asks them to complete it. (R.0035) She further testified that she first learned of the Appellant's school attendance on Wednesday, April 21, 1982. She stated:

On the day in question, Tony, it seems to me that you came in, and what happened is, you said, I just got at (sic) the school, am I late? And I didn't know up til (sic) that time that you were in school. I says, if that's the case, then you need to get your schooling ok'd. I questioned you about it. And then you never came back in to fill out the schooling attendance questionnaire. (R.0035, see also 0037)

Based upon the evidence in the record and the testimony presented at the hearing, the Appeal Referee concluded that the Appellant's contention is not supported by the evidence in the record and affirmed the Department Representative's decision denying benefits for 35 weeks and establishing a \$968 overpayment.

ARGUMENT

POINT I

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

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated, 1953, provides in part

In any judicial proceedings under this section the findings of the Commission and the Board of Review as to the facts if supported by evidence shall be conclusive and the jurisdiction of said Court shall be confined to questions of law.

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 disturbed. Martinez v. Board of Review, 25 U. 2d 131, 477 P. 2d 587 (1970).

In analyzing the above-referenced review provision, this Court has stated:

Under Section 35-4-10(i) 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. Continental Oil Company v. Board of Review of the Industrial Commission of Utah, 568 P. 2d 727, 729 (Utah, 1977).

In Millet v. Industrial Commission, 609 P. 2d 946 (Utah, 1980) this Court stated that "this review standard applies in like degree to cases involving a finding of fraud on the part of the commission."

POINT II

CONTINUED ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS IS DETERMINED FROM WEEK TO WEEK BASED ON INFORMATION PROVIDED BY THE CLAIMANT ON A WEEKLY CLAIM FORM.

Section 35-4-4 of the Act, Utah Code Annotated, 1953, provides:

4. An unemployed individual is eligible to receive benefits with respect to any week only if it has been found by the commission that:

(a) He has made a claim for benefits with respect to that week in accordance with any regulations the commission may prescribe.

Department of Employment Security Rules and Regulations, Paragraph

3.e.(2) and (3) provides:

(2) Claims for extended benefit payments shall be filed on forms prescribed by the Department.

(3) The terms and conditions which apply to claims for, and payment of regular benefits under the Utah Act shall apply in the same manner to claims for, and payment of extended benefits. . . .

One of the conditions which disqualifies a claimant from receiving benefits is full-time attendance at an established school. Section 35-4-5(g), Utah Employment Security Act.

In accordance with the statutory and regulatory requirements set forth above, the Department issues to each claimant a weekly claim form designed to facilitate the reporting of any facts which may affect the claimant's eligibility for benefits. Since the claimant is paid unemployment benefits based upon the information supplied by him on these forms, it is imperative the information be correct.

On the back of the four weekly claim forms filed by the Appellant he was required to certify "Yes" or "No" to the question: Did you attend any school or training? If he certifies yes, he is further required to show the school name and the days and hours attended.

In the instant case the Appellant filed for benefits certifying on each card that he was not attending school when in fact he was.

POINT III

THE BOARD OF REVIEW DID NOT ERR IN DETERMINING THAT THE APPELLANT KNOWINGLY WITHHELD MATERIAL INFORMATION TO RECEIVE UNEMPLOYMENT INSURANCE BENEFITS TO WHICH HE WAS NOT ENTITLED.

The evidence is unrefuted that the Appellant attended school on a full-time basis for the weeks ending March 27 through April 17, 1982, and failed to certify such attendance on his weekly claim forms. Accordingly, the Department imposed the specific sanctions provided in Sections 35-4-5(e) and 35-4-6(d) of the Act and held that the Appellant was disqualified from receipt of benefits for the four weeks with respect to which he made the misrepresentations and for an additional 31 weeks commencing September 19, 1982 and ending April 23, 1983. The Appellant was further required to repay to the Department \$968, twice the amount received by reason of the misrepresentation.

Section 35-4-5(e) provides in pertinent part:

5. An individual is ineligible for benefits . . .

(e) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this act, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter . . . In addition, each individual found in violation of this subsection shall pay to the commission twice the amount received by reason of the false representation or statement or failure to report a material fact. . . .

withheld material information to obtain benefits to which he was not entitled.

In the case of Martinez v. Industrial Commission, 576 P. 2d 1295 (Utah, 1978), the Plaintiff filed claims for unemployment insurance benefits certifying his availability for work when he was in fact hospitalized. In affirming the Board's decision that the Plaintiff had knowingly withheld material facts regarding his ability and availability for work in order to receive benefits to which he was not entitled, this Court stated:

The intention to defraud is inherent in the claims themselves which contain false statements and fail to set forth material information required by statute. The filing of the claim evidences a purpose of willingness to present a false claim in order to obtain unlawful benefits and is in and of itself a manifestation of intent to defraud.

CONCLUSION

The Appellant had a duty to certify his full-time school attendance on his weekly claim forms. He was aware of this requirement as evidenced by such certification on previously filed claim forms. The Appeal Referee concluded that the Appellant's contention "that he had been instructed not to report his school attendance on his weekly claim, is not supported by the evidence presented." In so holding the Referee properly acted within his duty of weighing the testimony and evidence in the record, observing the demeanor of the witnesses during the hearing, and drawing reasonable inferences therefrom. Such is not an abuse of discretion.

In Kennecott Copper Corporation Employees v. Department of Employment Security, 13 2d 262, 264-265, 372 P. 2d 987, 989 (Utah, 1962), this Court stated in pertinent part:

[T]he evidence is to be looked at in the light most favorable to the findings; and in so doing, if there is evidence of any substance whatever which can reasonably be regarded as supporting the determination made, it must be affirmed. . . . (Emphasis added.)

Relying upon the applicable law, and finding that the Appellant knowingly withheld material information to receive unemployment benefits to which he was not entitled, the Board properly disqualified the Appellant from receipt of benefits and required him to repay twice the amount received by reason of the misrepresentations.

The evidence in support of the decision of the Appeal Referee as affirmed by the Board of Review is competent and should, therefore, be affirmed.

Respectfully submitted this ____ day of June, 1983.

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By _____
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CERTIFICATE OF MAILING

I do hereby certify that I mailed two copies of the foregoing Respondent's Brief to Antone E. Purcell, Appellant, P. O. Box 437, Duchesne, Utah 84021, this ____ day of June, 1983.
