

1993

Michael J. Mortensen vs. Department of Employment Security : Brief of Appellant

Utah Court of Appeals

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Michael J. Mortensen; Petitioner, Pro se.

Emma R. Thomas; Attorney for Respondent.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 930093 CA
IN THE UTAH COURT OF APPEALS

MICHAEL J. MORTENSEN
Petitioner and Appellant

vs.

DEPARTMENT OF EMPLOYMENT SECURITY
Respondent and Appellee

: Appeals Case #930093-CA
:
:
:

BRIEF OF THE APPELLANT
TO THE UTAH COURT OF APPEALS
FROM MICHAEL J. MORTENSEN

APPEARANCES

MICHAEL J. MORTENSEN
Petitioner representing himself
8001 South 1300 West
West Jordan, Utah 84088

EMMA R. THOMAS #4681
Attorney for Respondent
Industrial Commission of Utah
Department of Employment Security
140 East 300 South
P.O. Box 11600
Salt Lake City, UT 84147

FILED

MAY 24 1993

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

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Petitioner and Appellant :
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Petitioner representing himself
8001 South 1300 West
West Jordan, Utah 84088

EMMA R. THOMAS #4681
Attorney for Respondent
Industrial Commission of Utah
Department of Employment Security
140 East 300 South
P.O. Box 11600
Salt Lake City, UT 84147

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LEGAL ASSISTANCE

Petitioner had attempted to get legal representation from Utah Legal Service for preparation of this brief. My source of income, possessions, savings, etc. were within the financial guidelines of Utah Legal Services and would allow them to represent me free gratis. But after looking at my IRA's they said I was ineligible. (0104-0105) When I asked what it would cost to hire a lawyer, Mr. Dave Challed said, "Around \$800 for the brief and representation." To me, \$800 is like \$8,000 and the return on investment to receiving unemployment benefits would not be reasonable. So I will try my best to understand the legal guidelines to preparing my brief for the Court of Appeals and do this, myself, without personal legal assistance.

EXPLANATION OF PREVIOUS NUMBERING SYSTEM

My original Docketing Statement included all the important dates and documents available up to then. The Department of Employment Security Petition for Review also listed these same documents and numbered them from 0001 to 0100. Thus for simplicity, and avoidance of repetition, I'll also refer throughout my own brief to these same numbers, 0001-0100 found in this other document. In addition, the new document information introduced within my brief, starts on Pages 0101-0123, these numbers are correlated within the *addendum* of my brief.

PETITIONER COUNTER POINTS
TO ANSWER AND CERTIFICATION OF RECORD.

As I considered the respondents five points in the "Answer and Certification of Record", document by Department of Employment Security, I have tried to address, list, and separate them with a number system throughout my brief. As the "Answer and Certification of Record" is found in my *addendum* as numbers (0112 and 0113), anytime the reader sees these numbers in the text can realize that I am drawing counter point examples for examination. Note: Item #3 will not be rebutted. The \$931. overpayment is not an issue with me, it is fair if the Court of Appeals sides with the Department of Employment Security.

STATEMENT SHOWING JURISDICTION

This is an appeal of a final judgement from the Board of Review, the Industrial Commission of Utah, Unemployment Compensation Appeal, Case No. 92-A-7286, Decision, Case No. 92-BR-486. This appeal is concerning the Department of Employment Security denial of my receiving Unemployment benefits.

STATEMENT OF ISSUES PRESENTED ON APPEAL

1. BOARD OF REVIEW'S SPECIAL IMPLIED GRANT OF DISCRETION

Being a common individual using the courts, I am unaware of previous court cases that tend to disallow the judgement of a lower case in favor of a higher case. The Board of Review said "nor has it considered the new evidence provided by the employer on appeal in making this decision to reverse the Administrative Judge's determination." (0073, 0112-#1,0113-#2,#4,#5) When the higher court has only the same evidence that the lower court had, that being nothing new, how can it come up with an exact opposite conclusion? I feel that this is what had happened with the capricious decision making of the Board of Review. How can the Board of Review be entitled to a deference pursuant to a grant of discretion in this matter? I don't understand this lack of predictable pattern of law. Due to fairness to those participating in the previous trial, higher courts shouldn't take liberty to overshadow the competent judgement of the Administrative Law Judge or of one of it's own Board of Review members when there isn't new evidence with which to judge from. (0073, 0112-#1,0113-#4,#5)

The Administrative Law Judge quoted in her decision that "In this case, the claimant quit work...the claimant is not disqualified from the receipt of benefits"(0051) and within the ranks of the Board of Review there appeared an abstaining vote. The third Board of Review member affirms the decision of the Administrative Law Judge, Hon. Reanna K. Sloniger:

"In my opinion, the claimant **met his burden** to prove that his work situation with the employer was untenable and "sufficiently adverse to a **reasonable person**¹ to **outweigh the benefits of remaining employed.**" His supervisor's constant eruptive irritation with the claimant, coupled with the claimant's diabetes and his fruitless efforts to persuade the company president to control Wen Winegar's angry outbursts constituted good cause² for quitting. I would, therefore, affirm the decision of the Administrative Law Judge.

/S/ Connie Neilson (0075)

I wish to know why the conclusions appeared to vacillate so widely between judiciary constituents; Judge Sloniger and Connie Neilson for employment benefits, Mr. Carlson and Mr. Hanover against. I wonder if the background viewpoints of the Board of Review members had any bearing in their attitudes in this case. Which factions of the community do each represent? Were some more pro management (employer) and another more pro labor (employee), thus affecting their decision making? (0112-#1)

2. SOCIAL COSTS STATUTE³

As I sought a solution as if it was possible to defuse placing fault on the employer or the

¹ R562-5A-2. Good Cause, 1 a. Adverse effect on the claimant.

² R562-5A-5 Evidence and Burden of Proof. "...he had "good cause" for quitting..."

³ 35-4-7.4 Social Costs--Relief or Charges. 1 (g) "Any benefit costs..."

employee, I called Mr. Devine of Job Service and posed that question. He mentioned the issue of "Social Costs". Upon further inquiry, Emma Thomas, Attorney for Respondent gave to me the 35-4-7.4 "Social Cost - Relief of Charges" statute. As in section 1(g), could Utah Pump/Mike Mortensen fit this case definition? "Any benefit costs that are not charged to an employer and are not defined in this subsection are also social costs." (0102-0103) Due to the existent former employer/employee friendships, (0003, 0015) issues of quit VS compelled pressure to quit (the reasons why), issues of family business VS rights of the individual employee...how did two of the three Board of Review members be so absolutely decisive when it "concludes that it would not be against equity and good conscience to deny unemployment insurance benefits in this matter".(0074) Does this case have to unreasonably be stamped right/wrong, accepted/denied like Mr. Carlson and Mr. Hanover averred, and due to their split vote with Connie Neilson, arbitrarily sway the balance? (0112-#1,0113-#2,#5) Could the Social Costs statute⁴ apply here?

3. AGAINST EQUITY AND GOOD CONSCIENCE, FACTS OF LAW

In reversing the Administrative Law Judge, Mr. Carlson and Mr. Hanover said:

"In reversing the decision of the Administrative Law Judge, the Board of Review notes that in quit cases it is the claimant who **has the burden to prove** that he or she had good

⁴ 35-4-7-4 Social Costs--Relief or charges. 1 (g) "Any benefit costs..."

cause to quit⁵ or that it would be **against equity and good conscience to deny unemployment insurance benefits**. The Board of Review finds that the claimant in this case **quit precipitously** when Mr. Winegar lost his temper with the claimant because of the way he took a telephone message. While Mr. Winegar's **repeated bursts** of irritation with the claimant **are not condoned by the Board of Review**, the Board notes that in order to establish good cause for quitting a claimant must establish that:

"The separation [was] motivated by circumstances which made **continuance of the employment a hardship** or matter of real concern sufficiently adverse for a **reasonable person⁶** to **outweigh the benefits of remaining employed**. There must be a showing of actual or potential, physical, **mental**, economic, personal or **professional harm** caused or **aggravated by continuance** in the employment. The claimants reasons for belief of the consequences of remaining on the job must be **real, not imaginary**; substantial, **not trifling**. The circumstances must be **applied to the average individual, not the supersensitive**. [Utah Administrative Code R562-5a-2 (1992).] (0073)

"Though the claimant described to the Administrative Law Judge **a work situation that was unpleasant to him** and also described some physical and emotional difficulties due to his diabetes, **he had worked with these job conditions for some time**. The Board of Review finds that **immediate severance of the employment situation was, therefore, not required by the claimant**. The Board of Review concludes that **circumstances on the job, while admittedly not ideal, simply were not so compelling** that the claimant had to

⁵ R562-5A-5 Evidence and Burden of Proof. "...he had "good cause" for quitting..."

⁶ R562-5a-2. Good Cause, 1 a. Adverse Effect on the Claimant.

quit without first obtaining alternate employment."

"Furthermore, since the Board of Review finds that the claimant's act of quitting precipitously without first obtaining alternative employment was unreasonable, it concludes that it would not be against equity and good conscience⁷ to deny unemployment insurance benefits in this matter."(0073-0074)

4. STRESSFUL WORKING CONDITIONS

I wish to address these Board of Review findings and to exemplify my points of view through former testimony and documents. On July 16, 1992 in the "Claimant Statement of Voluntary Quit", I stated, "Our personalities have, at times, clashed with each other and have caused each of us anxiety and resulted in yelling at each other...we were both at the end of our rope and could see that it was not a happy situation, seeing how his needs and the reality of my ability range to work like this were incompatible." (0003, 0113-#2) I wrote an appeal letter to the Department of Employment Security, received on Aug. 21, 1992 in which I said, "...There had been several argument yelling matches over the months that decimated myself to the point where I did make much effort to seek other employment...All during this time I was working for Mr. Winegar, doing what he asked, giving great attention to helping him in all the areas that he needed from me, as an office manager. I had to put up with rudeness, being blamed for not doing things that were never assigned to me (ambiguity on the Bosses part), told I was forgetful, yet

⁷ R562-5a-2 Good Cause. 1 a. Adverse Effect on the Claimant

upon bringing facts to light, I was yelled at and blamed. I, upon drawing attention to my feelings and observations of my treatment delivered from certain related [relative] employees, I was told to back off. I can quote instances in which I had to "back off" with hurt feelings, biting my tongue to prevent further harsh words, or have full blown yelling matches. I have worked in a taunting atmosphere where my self respect was never considered and reduced to where I had to lash back with a loud "I quit"... (0113-#2)

"I have listened and been hurt when I heard my employer tell another employee, my equal, of things that he was critical. The incident was held in me for a long time, later to be said, in which I was apologized to. (0113-#2)

"Working in a family business had some bad advantages...Many things are implied and gets blamed of on the office manager if they are not done..." (0012-0014, 0113-#2)

5. PRESSURE VS ASK FOR JOB BACK

And of the animosity that contributed to me saying "I quit", Judge Sloniger asked and I answered her question:

Judge: Alright, did you decide, I mean did you in that week plus the couple of days you had, did you think maybe you should not have quit and asked for your job back?

Claimant: I actually did state something to that affect.

Judge: To Whom.

Claimant: To Wen

Judge: Wen? After that?

Claimant: Something in that period it was stated something to that affect you know that well I've got to get my words real careful here because I really, I had come close to the end of my rope as he was willing to let me quit. **I didn't know whether I wanted to continue under the pressure** (0113-#2) because it seemed to be quite unbearable to me. The pressure meaning the animosity that I felt expressed towards me." (0036. 0113-#2)

6. EG&G - ACCOUNTS PAYABLE INCIDENT

Another incident referred to Judge Sloniger showed tension within the office and resulted in me quitting earlier:

Claimant: I had a bill that had been in my accounts payable for months, and I went back to see from former checks whether we had paid it, and the check indicated a check had gone out maybe nine months previous to that time for EG&G [note: I'm not sure it was EG&G, it might have been Ingersol/Rand, or Sealol]. Now they were not pressing us to pay it. However, the bills did appear, and I went back to talk to Wen about it [I pursued it not to hassle Wen] and he got really angry that we had not paid it. [At times we didn't have money to pay all our creditors anyway. Sometimes, some of us, myself included, helped out by loaning Wen money when it was really needed. A "supersensitive individual," might be less bending and less willing to make loans if he didn't already care about his employer and feel he should sometimes "roll up his sleeves" and help. (0073) I still have \$700 out from that time, as well as an issue of a week of vacation pay coming from Utah Pump. (0037, 0063, 0108)] I've got to interject that I,

with my accounts payable systems monthly would give the accounts payable to Wen to show what was owed and how many days, months, it was overdue and so he knows of the businesses that needed to be paid.

Judge: In other words what you are saying is that he already knew about this because you gave him monthly statements.

Claimant: All the time

Judge: Alright.

Claimant: I was giving him monthly statements.

Judge: So he got angry.

Claimant: Well he got angry thinking that we had paid that and why didn't you know that. He got really ticked. (0113-#2) I got really ticked because I was bringing it to his attention to help me with information of what he knew, and at that time I got angry. I wanted to tell Mitch about it, and all the time, Mitch is so busy you try to take care of things as best you can with his dad. I brought it to his attention, showed him, even made a phone call, found out yes indeed this amount was still owed, and he later, like I said, I found his kindness with how he apologized so I rescinded and decided not to quit. (0113-#2)

Judge: Okay.

Claimant: Is this the time where I can tell you of incidents your Honor?

Judge: You can, but I don't need them.

Claimant: I'm trying to...

Judge: Did you quit, did you quit as the Department found to look for other work or

did you quit because you couldn't stand working with Wen and he created anxiety and stress. (0113-#2) Why did you quit?

Claimant: I guess I need to, see the answer to that question...

Judge: No listen to me, listen to me, when you said...

Claimant: **It became so stressful that I left.**

Judge: Yes and you said that. Here's what you said.

Claimant: I left because of that.

Judge: You said, "The anxiety and the pressure built up working with Wen, and I said, 'I quit'" And you gave second thoughts but because of all of the incidents with Wen you decided not to ask for your job back. That's what you've told me as the reason you quit. Is that the reason you quit?

Claimant: That's the reason. **The anxiety was overwhelming...**" (0041-0042,0113-#2)

7. ANY REASONABLE PERSON

I feel that from the first series of documents filled out, the "Claimant Statement of Voluntary Quit" (0002-0005, 0113-#2) on up to the trial where Judge Sloniger asked me in detail and under oath, I have told of the anxiety that Mr. Winegar and I both worked under. Why wasn't this clear enough for Mr. Carlson and Mr. Hanover? I had established the fact that I had shown burden of proof that I had good cause to quit.⁸ Paraphrasing Connie Neilson, I also believe that any reasonable person⁹ would have

⁸ R562-5A-5 Evidence and Burden of Proof. "...he had "good cause" for quitting..."

⁹ R562-5a-2 Good Cause. 1 a. Adverse Effect on the Claimant

done the same as I had after outweighing the same benefits of remaining employed. (0075, 0113-#2) I felt there was a showing of mental and professional harm caused by continuance in the employment, and that I didn't imagine this happening nor was it trifling. I claim I am not supersensitive, but am an average individual. (0073)

8. INELIGIBILITY (OR ELIGIBILITY) FOR BENEFITS, QUIT STATUTE 35-4-5

I wonder if Mr. Carlson and Mr. Hanover would have worked under the conditions that I tarried under when they said, "Though the claimant described...a work situation that was unpleasant to him...he had worked with these job conditions for some time." (0074, 0112-#1, 0113-#2,#5) Unpleasant isn't the word, it was more like unbearable. Did they think I should have quit before allowing such stressful conditions to happen? Why did they imply that I had gotten used to this? Mr. Carlson and Mr. Hanover stated "he had working under these conditions for some time. The Board of Review finds that immediate severance of the employment situation was, therefore, not required by the claimant. The Board of Review concludes that circumstances on the job, while admittedly not ideal, [arbitrarily stated, 0112-#1,0113-#2,#5) simply were not so compelling that the claimant had to quit without first obtaining alternative employment." Would Mr. Carlson and Mr. Hanover have stayed under similar conditions? (0113-#2) Did they think I gave up my rights by severancing my relationship with Utah Pump? If so, it's not fair and their judgement should be overturned. The same law that protects employers protects employees working under duress also. If duress is such that it becomes unbearable that such employee has to quit his job, then, after a determination,

he would still receive benefits. In statute 35-4-5, "Ineligibility for Benefits, Quit" it states "A Claimant shall not be denied eligibility for benefits if the claimant leaves work under conditions of such nature that it would be contrary to equity and good conscience to impose a disqualification."¹⁰ (0119) Though I had decided to stay under duress, or as Mr. Carlson and Mr. Hanover averred "he had worked under these conditions for some time" (0074) did not mean I forfeited my unemployment benefit rights when I did quit and asked for them. I have presented evidence to show that the work environment was unbearable, not just unpleasant. (0112-#1, 0113-#2,#5)

9. REFUSAL TO RECOGNIZE EFFORT

The statute 35-4-5, "Eligibility for Benefits, Quit" says, "The commission shall, in cooperation with the employer, consider...the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility is contrary to equity and good conscience."¹¹ (0119) I believe as Mr. Carlson and Mr. Hanover considered "the reasonableness of the claimants actions", they capriciously concluded that though I hadn't first obtained alternative employment before quitting, they didn't recognize that I was trying. (0003, 0005, 0112-#1, 0113-#5) How many judicial seats are there when a difficulty arises, so that a judge has a job to go to enabling such judge to leave the other behind? To assume by Mr. Carlson and Mr. Hanover that I was not looking for another

¹⁰ 35-4-5 Ineligibility for Benefits. Quit. (a) "A claimant shall not be denied..."

¹¹ 35-4-5 Ineligibility for Benefits. Quit. (a) "... genuine continuing attachment..."

job while at Utah Pump was not correct, of not having another job to go to is correct.

My situation in finding a job, could be considered similar to finding a judgeship - not many of them - and is just as real for me on my own level as a recreational therapist. I had limited options available as a recreational therapist as I said to Judge Sloniger:

Claimant: ...The anxiety was overwhelming. I didn't have another job to go to. I brought newspaper articles, not articles, but help wanted ads that shows a variety of days showing that there's not a whole lot of recreation therapy jobs... (0113-#2,#5)

Judge: Why are you focusing on recreation therapy jobs?

Claimant: Because I'm licensed in that..." (0042)

Besides these statements made to Judge Sloniger, why wasn't my initial "Claimant Statement of Voluntary Quit", dated July 16, 1992 enough to show that I was trying to replace my current employment with that of the National Cart Company? (0112-#1,0113-#2,#5) "From January on, I had been trying to get another job of washing and repairing shopping carts from a former friend of mine, LeRoy Sampson. That person was trying to renew his contract contacts with companies in the intermountain West...I had been letting Mr. Winegar know of this effort and of my subsequent future quitting which Mr. Winegar was patiently letting me work for him until I started the new job..." (0003 & 0005) Mr. Carlson and Mr. Hanover "against equity and good conscience" (0073) refused to acknowledge this effort. (0112-#1, 0113-#2,#4,#5).

I wish to quote from the Docketing Statement to further elaborate my claim that I was making efforts to prepare myself for future work while at Utah Pump, "I wish however, it be known that the Winegars have tried to help me with my employment needs. First and

foremost, they gave me a job...I started working for Utah Pump in a new position to me, Office Manager. It was also within this same letter that I also said I had received a power stream sprayer from Wen in exchange for a debt I had with him. I needed a sprayer pump, they gave me a good deal on one that hadn't sold for months. I had a trailer in which Wen offered to trade a wire feed welder so that his son could use the trailer to start another business. They were willing to give me time, information and their help to prepare for the instance I would start working intra-state for National Cart Company. I was disappointed that the job never materialized, the job that both Wen and I thought would be excellent and would allow me to stop working for them. I was looking for other work and Utah Pump was helping me." (0095-0096, 0112-#1,0113-#5)

SUMMARY OF ARGUMENT

1. When the higher court has only the same evidence that the lower court had, nothing new, why was the conclusion exactly the opposite? How can the Board of Review be entitled to a deference pursuant to a grant in this matter? In what statute is this expressly made or implied within? Why did the conclusions appear to vacillate so widely between judiciary constituents? Does not the two of three split in the voting members of the Board of Review impugn the idea of its conclusion being done in equity and good conscience?

2. Did the background of any member of the Board of Review individually contribute to its decision making?
3. Could the "Social Costs" statute¹², section 1(g), "and are not defined in this subsection are also Social Costs" be referred to in this case? Because the benefit costs were not to be charged to the employer according to two of the Board of Review members, why must they be charged to the employee? Was it possible for the Board of Review, by using this subsection, to defuse placing fault on the employer or the employee thus maintaining its equity and good conscience in its conclusions?
4. "While the circumstances on the job were admittedly", stated by the Board of Review, "not ideal" and the "employers repeated bursts of irritation were", also, "not condoned" (0073), how could its deciding members say that its decision making was done in equity and good conscience?¹³ Doesn't these admissions show that there was a contributory cause of unnecessary stress to the atmosphere of this work environment?
5. If such animosity was in existence to the Board of Review, why didn't it assume a more prevalent part in their decision making? Was not this the claimant "burden

¹² 35-4-7.4 Social Costs--Relief or charges.

¹³ R562-5a-5 Good Cause. 1 a. Adverse Effect on the Claimant

to prove"?(0073) Why wasn't this viewed as "so compelling that the claimant had to quit without first obtaining alternate employment"?(0074) I have presented evidence to show that the work environment was unbearable, not just unpleasant. Did they think I should have quit before allowing such stressful conditions to happen? Why did they imply that I had gotten used to this? Because I had worked under these conditions for some time, didn't forfeit my unemployment benefit rights when I quit and asked for them. Was I expected to work under these conditions without alternate unemployment rights by the Board of Review? Would any reasonable person¹⁴ have done the same as I have done after outweighing the same benefits of remaining employed?

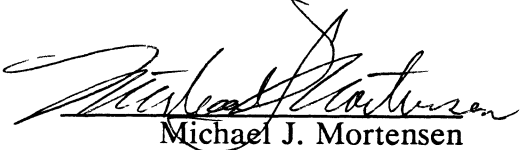
6. Why did the deciding Board of Review members refuse to acknowledge my efforts to find employment through efforts with recreation therapy jobs (0042) or the effort of buying, trading and collecting of equipment for the National Cart Company?(0003, 0086) As the deciding Board of Review members considered "the reasonableness of the claimants actions", they capriciously concluded that though I hadn't first obtained alternative employment before quitting, they hadn't acknowledged that I was trying.

¹⁴ R562-5A-2 Good Cause. 1 a. Adverse Effect on the Claimant

CONCLUSION

So in summary, I feel that a higher court (Board of Review), using only the same information available to the lower court (Administrative Law Judge), should not be allowed such discretionary liberties in this case. If such "implied" statute language does exist as stated by Emma R. Thomas, Attorney for Department Security (0113-#4), it is not known to me or to the general public. I just reason that common sense would not allow such a conclusionary reversal as such would appear quite unreasonable, irrational, arbitrary and capricious. (0112-#1,0113-#5) How does any employee have rights and is supported upon a quit if not in this case? (0113-#2) Or does the employer's rights take priority over the employee's rights? (0112-#2,#4) How much did the Board of Review want me to take before they would say "enough"? (0112-#1) Why did not the Board of Review recognize my actions to try to remain attached to the labor market? Was this not "against equity and good conscience" to deny unemployment benefits"? (0073)

Dated this 22ND day of May, 1993


Michael J. Mortensen

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the Brief by depositing the same in the United States mail, postage prepaid to the following:

Utah Pump and Motor Supply
c/o Mitch Winegar
1839 South 900 West
Salt Lake City, Utah 84104

Emma R. Thomas #4681
Attorney for Respondant
Board of Review of the Industrial Commission of Utah, Department of
Employment Security
40 East 300 South
P. O. Box 11600
Salt Lake City, Utah 84147

Dated this 22nd day of May, 1993


By Michael J. Mortensen

ADDENDUM

03-05-93

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In copying the Docketing Statement, the cost was over \$40. I have included these receipts as an explanation of why in my brief I refer to 0001 to 0100 of the Department of Employment Securities Petition for Review of previously introduced documentation. I hope to cut costs and repetition by doing this.

35-4-7.4

35-4-7.4 Social costs -- Relief or charges.

(1) Social costs shall consist of those benefit costs defined as follows:

(a) Benefit costs of an individual will not be charged to a base-period employer, but will be considered social costs if the individual's separation from that employer occurred under any of the following circumstances:

(i) the individual was **discharged** by the employer or voluntarily quit employment with the employer for disqualifying reasons, but subsequently requalified for benefits and actually received benefits;

(ii) the individual received benefits following a **quit** which was not attributable to the employer; or

(iii) the individual received benefits following a discharge for non-performance due to **medical reasons**.

(b) Social costs are benefit costs which are or have been charged to employers who have **terminated coverage** and are no longer liable for contributions, less the amount of contributions paid by such employers during the same time period.

(c) The difference between the benefit charges of all employers whose benefit ratio **exceeds the maximum overall contribution rate** and the amount determined by multiplying the taxable payroll of the same employers by the maximum overall contribution rate is a social cost.

(d) Benefit costs attributable to a concurrent base-period employer will not be charged to that employer if the individual's customary **hours of work for that employer have not been reduced**.

(e) Benefit costs incurred during the course of **commission-approved** training which occurs after December 31, 1985, will not be charged to base-period employers.

(f) Benefit costs will not be charged to employers if such costs are attributable to:

(i) the state's share of extended benefits;

(ii) uncollectible benefit overpayment;

(iii) the proportion of benefit costs **of combined wage** claims that are chargeable to Utah employers and are insufficient when separately considered for a monetary eligible claim under Utah law and which have been transferred to a paying state; and

(iv) benefit costs attributable to wages used in a **previous benefit year** that are available for a second benefit year under Subsection 35-4-3 (b) because of a change in method of computing base-periods, overlapping base-periods, or for other reasons required by law.

(g) Any benefit costs that are **not charged to an employer** and not defined in this subsection are also social costs.

Exclusion of Reimbursable Employers.

(2) Subsection (1) applies only to contributing employers and not to employers which have elected to finance the payment of benefits in accordance with Section 34-4-7.5 or 35-4-8.5.

35-4-7.45 Bonds to Ensure Compliance.

(1) The commission, whenever it considers it necessary to ensure compliance with this chapter, may require any employer, subject to the contribution imposed hereunder, to deposit with it any bond or security as the commission shall determine. The bond or security may be sold by the commission at public sale, if it becomes necessary, in order to recover any tax, interest, or penalty due. Notice of the sale may be served upon the employer who deposited the securities personally or by mail. If by mail, notice sent to the last-known address as the same appears in the records of the commission is sufficient for purposes of this requirement. Upon the sale, the surplus, if any, above the amounts due, shall be returned to the employer who deposited the security.

(2)(a) If an employer fails to comply with Subsection (1), the district court of the county in which the employer resides or in which he employs workers shall, upon the commencement of a suit by the commission for that purpose, enjoin the employer from further employing workers in this state or continuing in business until the employer has complied with Subsection (1).

(b) Upon filing of a suit for such purpose by the commission, the court shall set a date for hearing and cause notice to be served upon the employer. The hearing shall be not less than five nor more than 15 days from the service of the notice.

35-4-7.5 Nonprofit Organizations.

Financing of Benefits.

(a) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations,



UTAH LEGAL SERVICES, INC.

124 SOUTH 400 EAST • 4TH FLOOR
SALT LAKE CITY, UTAH 84111
(801) 328-8891

WATS 1-800-662-4245

April 20, 1993

Michael J. Mortensen
8001 South 1300 West
West Jordan, Utah 84088

Dear Mr. Mortensen:

I have reviewed your request for assistance from Utah Legal Services with Dave Challed, and I agree with his determination that your IRA account is an asset which must be considered to determine whether you are financially eligible for services. I understand that you would face a penalty for withdrawing funds from your IRA account, but despite the penalty it is an asset which is available to you which we cannot overlook.

Attached are the regulations which charge our Board with setting asset ceilings (\$1611.6) and a copy of the asset guidelines they have adopted. Also attached is the grievance procedure, your next step would be to appeal this determination to Brian Barnard because Waine Riches and I have reviewed the matter and agree with Dave's analysis. We wish you good luck pursuing your claim for unemployment benefits.

Sincerely,

Anne Milne
Director

enclosures

0104

maximum income level on the basis of factors listed in § 1611.5(b)(1), the factors listed in § 1611.5(b)(2) shall also be used before reaching a final determination.

(B) If a recipient tentatively determines not to serve a client under the maximum income level on the basis of factors listed in § 1611.5(b)(2), the factors listed in § 1611.5(b)(1) must also be used before reaching a final determination.

(c) A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

★ § 1611.6 Asset ceilings.

(a) By January 30, 1984, and annually thereafter, the governing body of the recipient shall establish and transmit to the Corporation guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services. ~~The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need.~~

(b) The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the legal needs of the elderly, institutionalized, and handicapped.

(c) Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client. The guidelines shall take into account impediments to an individual's access to assets of the family unit or household.

(d) Reasonable equity value in work-related equipment which is essential to the employment or self-employment of an applicant or member of a family unit, shall not be utilized to disqualify an applicant, provided that the owner is attempting to produce income consistent with its fair market value.

(e) The governing body may establish authority for the project director to waive the ceilings on minimum allowable assets in unusual or extremely meritorious situations. In the event that a waiver is granted, that decision shall be documented and included in the client's file. The recipient shall keep such other records as will provide information to the Corporation as to the number of clients so served and the factual basis for the decisions made.

§ 1611.7 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without express written consent of the client, except that the recipient shall provide such information to the Corporation when:

(1) The Corporation is investigating allegations that question the financial eligibility of a previously identified client and the recipient's representation thereof;

(2) The information sought by the Corporation relates solely to the financial eligibility of that particular client;

(3) The information sought by the Corporation is necessary to confirm or deny specific allegations relating to that particular client's financial eligibility and the recipient's representation thereof; and

Nov 6, 1992

Jo Wen,

In receipt of the following in agreement
with Utter Pump:

1. \$200.00 vacation time

2. Buy back of 1 High Pressure Pump (Cat) \$700.

Sincerely,

Mike Mortensen

P.S. Jo-Le paid ASAP

IN THE UTAH COURT OF APPEALS

MICHAEL J. MORTENSEN

Petitioner,

v.

DEPARTMENT OF EMPLOYMENT SECURITY,

Respondent.

* * * * *

Record of Petition for Review to the Utah Court of Appeals
from the Industrial Commission of Utah
Department of Employment Security

Appearances:

Michael J. Mortensen
Petitioner, Pro se
8001 South 1300 West
West Jordan, Utah 84088

Emma R. Thomas #4681
Attorney for Respondent
Industrial Commission of Utah
Department of Employment Security
140 East 300 South
P. O. Box 11600
Salt Lake City, Utah 84147

IN THE UTAH COURT OF APPEALS

MICHAEL J. MORTENSEN, :
Petitioner, :
v. :
DEPARTMENT OF EMPLOYMENT SECURITY, :
Respondent. :

CERTIFICATE
Case No. 930093-CA

I hereby certify that I am the duly appointed, qualified Secretary to the Board of Review of the Industrial Commission of Utah; that as such Secretary, I hereby certify that the following documents, numbered 0001 to 0100 inclusive, and designated as:

Page(s)

Claim for Unemployment Benefits, Form 601, dated July 17, 1992, effective July 12, 1992, for the claimant, Mike Mortensen (Exhibit 6)..... 0001
Claimant Statement of Voluntary Quit, Form 680-Q1, dated July 16, 1992, for the claimant, Mike Mortensen (Exhibit 4).....0002-0005
Eligibility Certification, Form 653-C, dated July 17, 1992 (Exhibit 5).....0006-0007
Record of Weekly Job Search Efforts (Exhibit 8)..... 0008
Employer Notice of Claim Filed, Form 606, dated July 28, 1992, unsigned, received by the Department on July 29, 1992 (Exhibit 3)..... 0009
Decision of Eligibility For Unemployment Insurance Benefits, Form 615-J, dated August 12, 1992 (Exhibit 2)..... 0010

Appeal From Decision of Representative, Form 617, received August 21, 1992, from the claimant, Mike Mortensen (Exhibit 1).....	0011-0014
Letter dated September 9, 1992, from Utah Pump and Motor Supply Company, received September 23, 1992, with attached letters of employees (Exhibits 7-A, 7-B, 7-C and 7-D).....	0015-0019
Notice of Hearing, Form 743, dated September 16, 1992, advising the claimant, Mike Mortensen, and the employer, Utah Pump & Motor Supply Co., of a hearing scheduled for Thursday, September 24, 1992 at 9:00 AM (Exhibit C).....	0020
Response Card, Form 725, from the claimant, Mike Mortensen, indicating the claimant will attend the hearing as scheduled (Exhibit D).....	0021
Decision of Administrative Law Judge mailed Sep- tember 24, 1992 (Exhibit B).....	0022-0023
Appeal From Decision of Representative, Form 617, from the claimant, Mike Mortensen, dated Septem- ber 24, 1992, received September 24, 1992 (Exhibit A).....	0024
Notice of Hearing, Form 743, dated October 5, 1992, advising the claimant, Mike Mortensen, and the employer, Utah Pump & Motor Supply Co., of a hearing scheduled for Friday, October 16, 1992 at 8:30 AM.....	0025
Transcript of Hearing held October 16, 1992.....	0026-0047
Decision of Administrative Law Judge mailed Novem- ber 13, 1992.....	0048-0053
Letter of Appeal to the Board of Review, addressed to the Administrative Law Judge from the employer, Utah Pump & Motor Supply Co., dated November 18, 1992, received November 20, 1992.....	0054-0055

Letter dated November 27, 1992 from the Board of Review to the employer, Utah Pump & Motor Supply Company, acknowledging receipt of its appeal to the Board of Review, with a copy to the claimant, Mike Mortensen, allowing both parties 15 days in which to submit written arguments or comments..... 0056

Letter memorandum dated December 2, 1992, from the employer, Utah Pump & Motor Supply Co., to the Board of Review, in support of the employer's appeal to the Board of Review.....0057-0058

Letter memorandum dated December 11, 1992, from the claimant, Mike Mortensen, to the Board of Review in rebuttal to the employer's appeal to the Board of Review, with attachments.....0059-0069

1. Letter dated December 11, 1992.....0059-0067

2. Letter dated July 15, 1992 from Quality Care Murray concerning Mike Mortensen..... 0068

3. Letter dated October 14, 1992 from Dr. John Houchins, Redwood Community Health, concerning Mike Mortensen..... 0069

Letter dated December 28, 1992, from the Board of Review to Utah Pump & Motor Supply Company, with a copy to the claimant, Mike Mortensen, forwarding a copy of the claimant's memorandum dated December 11, 1992, to the employer; forwarding a copy of the employer's memorandum dated December 2, 1992 to the claimant..... 0070

Claimant Record Transcript dated December 31, 1992..... 0071

Decision of the Board of Review dated January 13, 1993.....0072-0076

Letter dated January 13, 1993 from the Board of Review to the claimant, Mike Mortensen, submitting the decision of the Board of Review..... 0077

Letter dated January 13, 1993 from the Board of Review to Utah Pump & Motor Supply Company submitting the decision of the Board of Review..... 0078

Petition for Writ of Review filed with the Utah Court of Appeals on February 12, 1993 by the claimant, Michael J. Mortensen, received by the Board of Review on February 17, 1993, with attached letter of appeal dated February 12, 1993.....0079-0086

1. Petition for Writ of Review..... 0079

2. Letter of appeal dated February 12, 1993.....0080-0086

Writ of Review filed on February 12, 1993 by the Utah Court of Appeals, received by the Board of Review on February 17, 1993..... 0087

Docketing Statement filed by Michael J. Mortensen on March 5, 1993, to the Utah Court of Appeals, received by the Board of Review on March 6, 1993.....0088-0099

Letter dated March 9, 1993 to the employer, Utah Pump & Motor Supply Company, advising the employer that the claimant, Michael J. Mortensen, has filed a Petition with the Court of Appeals..... 0100

contain a full, true, and correct record of the above-entitled case as the same appears on file in the Office of the Industrial Commission of Utah, Department of Employment Security, the same being all the proceedings and all the evidence in the case.

Cherie D. Morgan
Secretary

Board of Review
The Industrial Commission of Utah
Department of Employment Security

Date: March 9, 1993

0111

EMMA R. THOMAS #4681
Attorney for Respondent
Board of Review of the Industrial
Commission of Utah, Department of
Employment Security
140 East 300 South
P. O. Box 11600
Salt Lake City, Utah 84147

IN THE UTAH COURT OF APPEALS

MICHAEL J. MORTENSEN, :
 :
Petitioner, :
 :
v. : ANSWER AND
 :
 : CERTIFICATION OF RECORD
DEPARTMENT OF EMPLOYMENT SECURITY, :
 :
Respondent. : Case No. 930093-CA

TO THE UTAH COURT OF APPEALS AND THE HONORABLE JUDGES THEREOF:

Respondent herein has hereby certified that the record of this case as contained in Pages 0001 through 0100 of this certification does constitute a true and correct record of all documents and transcript of testimony and evidence taken in this matter together with the findings of fact and decision.

Respondent answers the Petition of the Petitioner, Michael J. Mortensen, and avers:

1. The decision of the Board of Review of the Industrial Commission of Utah is supported by substantial evidence when viewed in light of the whole record, and was not arbitrary, capricious and unreasonable.


2. The decision of the Board of Review, which reversed a prior decision of an Administrative Law Judge, properly held that Petitioner left work voluntarily without good cause and that it would not be contrary to equity and good conscience to impose a disqualification pursuant to Section 35-4-5(a) of the Utah Employment Security Act.

3. The decision of the Board of Review properly established an overpayment in the amount of \$931.00, pursuant to Section 35-4-6(e) of the Utah Employment Security Act.

4. The decision of the Board of Review is entitled to deference pursuant to a grant of discretion to the agency and the Board of Review expressly made in the statute or implied from the language of the statute.

5. The Board of Review's conclusions are reasonable and rational in respect to mixed questions of law and fact.

Dated this 9th day of March, 1993.


Emma R. Thomas
Attorney for Respondent
Board of Review of the
Industrial Commission of Utah,
Department of Employment Security

CERTIFICATE OF MAILING

SERVED the foregoing Certification of Record by mailing a copy,
postage prepaid, to the following this 9th day of March, 1993.

Michael J. Mortensen
Petitioner, Pro se
8001 South 1300 West
West Jordan, UT 84088

Cherie D. Morgan

Judith M. Billings
Presiding Judge

Leonard H. Russon
Associate Presiding Judge

Russell W. Bench
Judge

Reginal W. Garff
Judge

Pamela T. Greenwood
Judge

Norman H. Jackson
Judge

Gregory K. Orme
Judge

Utah Court of Appeals

230 South 500 East, Suite 400
Salt Lake City, Utah 84102

Clerks' Office 801-578-3950
Administration 801-578-3900

Fax 801-578-3999

May 4, 1993



Mary T. Noonan
Clerk of the Court

Michael J. Mortensen
8001 South 1300 West
West Jordan, UT 84088

In Re:

Michael J. Mortensen,
Petitioner,

v.

Case No. 930093-CA

Department of Employment Security,
Respondent.

Dear Mr. Mortensen:

Our records indicate that the appellant's brief in this case was due April 22, 1993. To date, the brief has not been filed and is therefore in default. Your brief and seven copies must be received in this Court by May 12, 1993.

If the brief is not filed by May 12, 1993, the case may be dismissed pursuant to R. 3(a), Utah R. App. P.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Knighton".

Sheri Knighton
Deputy Clerk

cc: Jan Graham
Attn: K. Allan Zabel

IN THE UTAH COURT OF APPEALS

COPY

MICHAEL J. MORTENSEN,	:	
	:	
Petitioner/Appellant,	:	STIPULATED MOTION FOR
	:	ENLARGEMENT OF TIME
vs.	:	TO FILE BRIEF
	:	
DEPARTMENT OF EMPLOYMENT SECURITY	:	
	:	
Respondents/Appellees.	:	Case No. 930093-CA
	:	

COMES NOW the Petitioner, Michael J. Mortensen, Pro se, who requests pursuant to Rule 22, Utah R. App. P., for an enlargement of time to file his Brief in the above-entitled matter for the reason that he needs 30 days additional time to prepare and file his Brief.

Appellant has not previously requested or been granted an enlargement of time.

The original time that the Appellant's Brief is due is April 22, 1993.

Appellant seeks an enlargement of time to file his Brief until May 22, 1993.

Respondent Department of Employment Security, by and through its legal counsel, Emma R. Thomas, does not resist Appellant's request and hereby stipulates to Appellant's request as stated above.

DATED this 20th day of April, 1993.

BY:

Emma R. Thomas
EMMA R. THOMAS
Department of Employment Security
140 East 300 South
P.O. Box 11600
Salt Lake City, Utah 84111
Attorney for Respondent

BY:

Michael J. Mortensen
MICHAEL J. MORTENSEN
8001 South 1300 West
West Jordan, Utah 84088
Petitioner, Pro se

Judith M. Billings
Presiding Judge

Leonard H. Russon
Associate Presiding Judge

Russell W. Bench
Judge

Regnal W. Garff
Judge

Pamela T. Greenwood
Judge

Norman H. Jackson
Judge

Gregory K. Orme
Judge

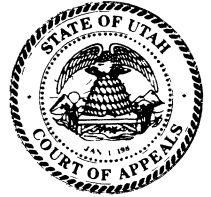
Utah Court of Appeals

230 South 500 East, Suite 400
Salt Lake City, Utah 84102

Clerks' Office 801-578-3950
Administration 801-578-3900

Fax 801-578-3999

March 10, 1993



Mary T. Noonan
Clerk of the Court

Michael J. Mortensen
8001 South 1300 West
West Jordan, UT 84088

In Re:

Michael J. Mortensen,
Petitioner,

v.

Case No. 930093-CA

Department of Employment Security,
Respondent.

Dear Mr. Mortensen:

On March 10, 1993, the record index on this appeal was filed in this court. The record remains on file with the trial court for your use in preparing your brief. The purpose of this letter, therefore, is to set the briefing schedule.

Pursuant to Rules 13 and 26, Utah Rules of Appellate Procedure, the appellant's brief must be served and filed on or before April 22, 1993. This due date takes into consideration the three days mailing provision of Rule 22(d). Briefs filed by use of first class mail must be postmarked on or before April 22nd, pursuant to Rule 21(a).

Please refer to the attached checklist and Rules 24, 26 and 27 for content and format requirements. These requirements are strictly enforced. Before making duplicate copies of your original brief, you may bring your original to the clerk's office at the Court of Appeals for examination. This will ensure that the brief is correct, and may save you time and expense.

Sincerely,

A handwritten signature in cursive script that reads "Janice Hill".

Janice Hill
Deputy Clerk

cc: Jan Graham, State Attorney General
K. Allan Zabel, Special Assistant Attorney General

1 have purged my disqualification from earned benefit 6x WBA.

35-4-5 Ineligibility for Benefits.

An individual is ineligible for benefits or for purposes of establishing a waiting period:

Quit.

(a) For the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount. A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

The commission shall, in cooperation with the employer, consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

Quit to Accompany Spouse.

Notwithstanding any other provision of this section, a claimant who has left work voluntarily to accompany, follow or join his or her spouse to or in a new locality does so without good cause for purposes of this subsection.

Discharge for Just Cause.

(b) (1) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the commission, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

Discharge for Dishonesty.

(b) (2) For the week in which he was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with his work as shown by the facts, together with his admission, or as shown by his conviction in a court of competent jurisdiction of that crime and for the 51 next following weeks and for each week thereafter until the claimant has performed services in bona fide covered employment and

DISPLAY

IS CERTIFICATE PROMINENTLY

PLEASE SEE INSTRU

STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF OCCUPATIONAL & PROFESSIONAL LICENSING
LICENSE

License Number

Issue Date

Expiration Date

0007636026

10/28/92

12/31/93

ISSUED TO

Mortensen, Michael J.
8001 South 1300 West

West Jordan

UT 84088-

CLASSIFICATION

RECREATIONAL THERAPIST

CATEGORY

SPECIALIST

SEALED AND ATTESTED



Michael J. Mortensen
SIGNATURE OF LICENSE HOLDER

DO NOT DETACH FOLD BACK UNTIL NECESSARY

CUT ALONG THESE PERFORATIONS

STATE OF
DEPARTMENT OF

License No

0007636026
ISSUED TO Mortensen
8001 South

West Jordan

CLASSIFICATION

RECREATIONAL
SPECIALIST

FOR IDENTIFICATION



PELLA INTERMOUNTAIN

Windows • Sliding Glass Doors • Wood Folding Doors

8020 SOUTH 1300 WEST • P O BOX 548 • WEST JORDAN, UTAH 84084 • (801) 566-4131 • FAX (801) 566-5414

March 1, 1993

To Whom It May Concern,

Mike is a loyal, hardworking employee who respects authority and works well with others. He is a considerate and dependable person.

We enjoyed having Mike as a member of our team at Pella Intermountain.

If you have any questions please feel free to call me at 566-4131 during business hours.

Sincerely,

Robert Ficklin
Assistant General Manager
Pella Intermountain

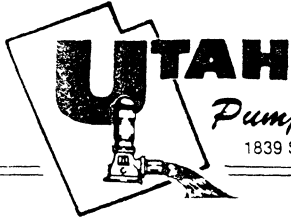
BRANCH OFFICES:

655 FIVE MILE ROAD
BOISE, IDAHO 83704
(208) 375-8918
FAX (208) 375-8918

#44 UNIVERSITY PARKWAY
1774 BRIGHAM'S LANDING CENTER
PROVO, UTAH 84604
(801) 374-2211
FAX (801) 374-2248

251 NORTHWOOD WAY
P.O. BOX 2213
KETCHUM, IDAHO 83340
(208) 726-0966
FAX (208) 726-1656

0121



Pump & Motor Supply Co.

1839 SOUTH 900 WEST — SALT LAKE CITY, UTAH 84104 — TEL (801) 972-3575 FAX (801) 972-3577

July 8, 1992

To whom it may concern:

It is our opportunity to write a letter of recommendation for Mike Mortensen. Mike has served our company for the last 18 months, of which we have enjoyed his personal service.

Mike is a likable man, gives of his knowledge, time and resources freely. He has been a capable office manager, screening calls, composing letters, using the computer, handling customers on the phone and at the counter. Mike, even at times, has helped out in our shop when called upon. Mike is a giving person.

We wish him well. Please feel free to call us for further information.

Sincerely,

UTAH PUMP & MOTOR SUPPLY

KM/sc

0122



1. Good cause is established if continuance of the employment would have had an adverse effect on the claimant which could not be controlled or prevented and necessitated immediate severance of the employment relationship, or if the work was illegal, or unsuitable new work.

a. Adverse Effect on the Claimant

The separation must have been motivated by circumstances which made continuance of the employment a hardship or matter of real concern sufficiently adverse to a reasonable person to outweigh the benefits of remaining employed. There must be a showing of actual or potential physical, mental, economic, personal or professional harm caused or aggravated by continuance in the employment. The claimant's reason(s) for belief of the consequences of remaining on the job must be real, not imaginary; substantial, not trifling. These circumstances must be applied as to the average individual, not the supersensitive.

b. Ability to Control or Prevent

Even though there is evidence of an adverse effect on the claimant, good cause is not established if the claimant:

(1) reasonably could have continued working while looking for other employment, or

(2) had reasonable alternatives that would have made it possible for him to preserve his job through approved leave, transfer, or adjustment to personal circumstances, etc. or,

(3) had not given the employer notice of the circumstances causing the hardship so the employer would have an opportunity to make adjustments which would alleviate the need to quit. An employee which grievances about his employment must show an effort to work out the problems with the employer unless such efforts would be futile.

c. Illegal

Good cause is established if the individual was required to violate State or Federal law or his legal rights were violated; provided the employer was aware of the violation and refused to comply with the law.

R562-5a-5. Evidence and Burden of Proof.

Since the claimant is the moving party in a voluntary separation, he is the best source of information with regard to the reasons for the quit. The claimant has the burden of proof and must show that he had "good cause" for quitting, or that he meets the requirements for allowance under the equity and good conscience provision before benefits can be allowed.