2-7-2013

Bringman v. New Albertsons Appellant's Reply Brief Dckt. 40232

IN THE SUPREME COURT OF THE STATE OF IDAHO

BILLY J. BRINGMAN,

Appellant,

vs.

NEW ALBERTSONS INC.,

Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

Supreme Court No. 40232

APPELLANT'S REPLY BRIEF

APPEAL FROM THE INDUSTRIAL COMMISSION
OF THE STATE OF IDAHO
Chairman Thomas E. Limbaugh, presiding

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I. Appellant's brief sets forth clearly the elements necessary to make its argument that, if Bringman made a false statement or willfully failed to report a material fact in order to obtain unemployment benefits, he is entitled to a waiver of any overpayment.

Appellant's brief sets forth the elements necessary to show that Bringman did not willfully make a false statement or willfully fail to report a material fact in order to obtain unemployment benefits, which is the standard for receiving a waiver of overpayment. The Department asserts that "Claimant has not presented any argument in his opening brief on this issue of the waiver or the civil penalty." Br. of Resp't, p. 23. However, Bringman's entire argument supports a waiver of penalty and repayment. Idaho Code § 72-1369(5) states that a recipient of an overpayment may receive a waiver of repayment where the overpayment is "other than resulting from a false statement, misrepresentation, or failure to report a material fact." Appellant's brief shows that Bringman's conduct met this standard, first, by setting forth clearly that Bringman chose the answer on the Department's form that most accurately described his circumstance. Appellant's Brief, p. 8-10. Appellant's brief goes on to show that, even if Bringman's selection was not the most accurate of the choices available, "any misstatement was not intentional, but accidental, and therefore not willful." Br. of Resp't, p. 9. Further, Appellant's brief sets forth why Bringman's testimony is adequate to support the Commission's conclusion that he quit for good cause and was eligible for benefits. Br. of Resp't, p. 12. Finally, Appellant's brief makes clear that Bringman's statement, regardless of accuracy, was not material, and that any the factual record in this case is not sufficiently reliable to make a determination regarding any repayment or penalty. Br. of Resp't, p. 13-16. Contrary to the Department's assertion that Bringman's brief does not meet this standard, the entirety of the brief

speaks to the very issue, and related sub-issues, surrounding whether Bringman should be liable for repayment, and if so, should be entitled to a waiver of repayment and penalties. For the reasons set forth in Appellant's brief and herein, Bringman is entitled to a waiver of repayment and of associated civil penalties.

II. The Department mischaracterizes Bringman's testimony to make his termination appear like a quit without good cause.

Despite the Commission's finding that Bringman quit with good cause the Department still bases its argument on the proposition that he quit for no reason. First, in its brief, the Department seeks to make Bringman's termination look like misconduct, stating "Claimant told the store director that he would not sign Employer's write up of this incident," and that, "[a]s a result, Employer placed Claimant on leave...." Br. of Resp't, p. 4. However, Bringman's testimony acknowledges that there were "times when...associates refuse to sign up a write-up, but it's always been filled out on the bottom that the employee refused to sign the write-up and, then, they file it as needed." Tr p. 11, Ll. 7-12. By making this otherwise insignificant piece of testimony part of the introduction of its case, the Department's brief vilifies Bringman by painting him as insubordinate when, in reality, the Record shows that refusing to sign a write-up was not contrary to any Albertsons policy.

The Department's brief goes on to mention that Bringman was offered the choice to "continue working for Employer as a fourth key person," but never mentions that Bringman was not working as a fourth key position at the time of the write-up. Br. of Resp't, p. 4. Rather, that position would have been a nearly fifty percent reduction in compensation for Bringman. All parties recognize that Bringman's employer at the time had other jobs and other employment available, but the availability of that employment does not make him ineligible for

unemployment compensation. Further, the Department's brief misses this point by misrepresenting Bringman's testimony. The Department states that Bringman responded "[t]hey did" when asked whether Albertsons had more of his work available. Br. of Resp't, p. 14. However, when asked that question, the full text of Bringman's response was, "They did. You know, it's they – he actually told me the only available position is this position that we are offering you." Tr p. 19, Ll. 20-22. Reading the full excerpt from Bringman's testimony, it becomes clear that Bringman is explaining that Albertsons offered him only this fourth key position, and nothing else. Taken out of context, however, the Department uses a fragment of this section of the transcript to build its case.

In actuality, and as set forth in Appellant's brief and confirmed by the Commission, Bringman quit for good cause, the standard for which is facing "real, substantial, and compelling circumstances that would have forced a 'reasonable person' to quit." R p. 35. As stated by the Commission, Bringman's termination was a "unilateral change in the terms of the employment agreement," and, because "the job was not suitable for Claimant," Albertsons effectively told Bringman that his work was no longer available for him. R p. 36. However, the Department's brief never discusses the fact that the Department's form had no option describing this scenario. Again, the Department's brief boldly mischaracterizes Bringman's testimony, stating that Bringman "had to acknowledge that he had the opportunity to go in and type in 'the story of what was going on,'" when, in the transcript, Bringman actually stated the opposite, saying, "it was pretty basic and, then, it didn't seem like there was an area to actually fill in in that, you know, or tell the story of what was going on." Tr p. 20, Ll. 5-8. By omitting Bringman's explanation of his entry on the form, the Department mischaracterizes his testimony to fit its case for disqualification.

III. The Department fails to address the issue of whether its application form is accurate and requests material information regarding eligibility for unemployment benefits.

The Department's brief never addresses the issue at the core of this appeal, namely, whether its form requests information that is material to a determination of eligibility for unemployment benefits. The Department sets forth the relevant language describing termination scenarios in which a claimant is eligible for benefits, stating that a claimant will only receive benefits "if he was laid off due to a lack of work, voluntarily quit with good cause, or was discharged, but not for misconduct." Br. of Resp't, p. 18. If the Department can use this language in its brief, more accurately reflecting that of Idaho Code § 72-1366 and more clearly setting forth the true inquiry to applicants for unemployment benefits, it could certainly use such clear language on the application itself.

Instead of addressing the validity of its form and the fact that it is denying Bringman's benefits over a matter of semantics, however, the Department's brief sticks to an esoteric discussion of whether Bringman should have been aware that he did or did not know whether he was selecting the language the Department had chosen to replace that of the relevant statute. Br. of Resp't, p. 17. Having applied for unemployment compensation before, Bringman was confident he knew the meaning of the terms presented on the application. However, the Department insists that Bringman should have known the difference between the choices he was given, none of which reflected the language of the statute, because he "received the pamphlet" and "[t]he front cover of the pamphlet told Claimant he was legally responsible to know the information in the pamphlet." Br. of Resp't, p. 17. The Department asserts that Bringman should not only have known the legal definitions obscured by the questionnaire, but should have been aware that he did not know them because he was an assistant store director of a grocery

store. Br. of Resp't, p. 13. Still, while the Department attempts to vilify Bringman by mention of fraud and "what could be considered a felony," Bringman was a layperson, even despite having read a pamphlet and having watched an online slideshow. Regardless, Bringman knew that the answer he selected was "the best closest fit to the situation that [he] was in," and so selected that choice. Tr p. 19, Ll. 13-14.

Elaborating on why there is no place for a claimant to explain why he chose an answer on the Department's form, the Department includes in its brief a list from its pamphlet of situations for which it may deny benefits. Br. of Resp't, p. 19. Incorrectly included in this list is "quitting a job," which, as set forth in the Record, is not always a valid reason to deny benefits. However, the Department sets forth no authority for when a claimant is allowed benefits, further underlining the fact that the form is intentionally ambiguous, designed to allow the Department to retroactively disqualify applicants for meaningless semantic technicalities. Never in its briefing, however, does the Department address the underlying issue in this appeal, which is that of whether the Department's form offers applicants the relevant choices under the statute to explain why they are unemployed.

IV. Regardless of his choice on an application that does not reflect the statute, Bringman's selection was not material.

The Department makes an incorrect conclusion regarding materiality of facts surrounding unemployment claims. Simply put, a fact is material if it is relevant to the determination of a claimant's right to benefits. *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 760, 589 P.2d 90, 96 (1979). Here, as shown by the Commission's holding that Bringman was eligible for unemployment benefits, his statement on the application regarding termination from Albertsons was not relevant. Rather, the relevant item to the Commission in its analysis was solely whether

Bringman quit "for good cause connected with the employment." R p. 35. The Department's characterization of the statute for purposes of its online application is not relevant to this determination.

V. Conclusion.

For all the reasons set forth above, Appellant respectfully requests that this Court reverse parts III, III (*sic*, should be "IV") and IV of the Commission's Decision and Order.

DATED this 7th day of February, 2013.

C. Tom Arkoosh
Attorneys for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of February, 2013, I served two true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

Tracey K. Rolfsen Deputy Attorney General Idaho Department of Labor 317 W. Main St. Boise, ID 83735	X	United States Mail, Postage Prepaid
	____	Overnight Courier
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New Albertsons Inc c/o TALX UC Express Attn: Frank Eckert P. O. Box 173860 Denver, CO 80217-3860	X	United States Mail, Postage Prepaid
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