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Lebow v. Commercial Tire, Inc. Appellant's Brief Dckt. 41234

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IN THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

CHANCE M. LEBOW)

Claimant-Appellant,)

v.)

COMMERCIAL TIRE INC; Major Base Employer)

IDAHO DEPARTMENT OF LABOR,) Case No. ~~2935-2013~~

Defendants-Respondents,) 4/12341

and)

RIGHT NOW, Inc.,)

Defendant.)

_____)

BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Nature of the Case

Chance M. LeBow (Mr. LeBow) appeals from the order of the Industrial Commission of the denial of unemployment benefits.

Statement of the Facts and Course of Proceedings

I am appealing the denial of Unemployment benefits and the waiver of the overpayment of unemployment benefits from the letter dtd March 2, 2013. The reasons appealing the denial letter was that I believed that I did not receive a fair hearing to discuss all issues that are listed in the denial letter.

The issues that I am appealing are; 1) denial of unemployment benefits and 2) denial of waiver of the overpayment of the unemployment benefits. As part of the previous judges' conclusions, he stated that the claimant accepted work on December 6, 2012 but it is impossible to accept employment when I was according to exhibit 9 page 1 of 2, was separated from Right Now Heating and Air Conditioning on December 5, 2012. Also according to the page in question, there is no reason listed for the separation from the job. On exhibit 9 page 2 of 2, change of status listed as termination but no signatures at the bottom of the page to sign off the change of status. So it is impossible for someone to receive a call to report to work on December 6 when I was according to exhibit 9 separated on December 5, 2012. According to the phone records which are attached, I was called only time on 12/5/2012 7:56am 208-761-9670 Caldwell ID incoming CL 1 minute to discuss a potential job. I didn't receive any more phone calls that morning on where the location of the job would be at. Nor was I contacted neither on the day of December 4, 2012 to discuss a potential job for December 5, 2012 or December 6, 2012.

According to exhibit 12 page 2 of 6, I finally was able to contact the case manager to discuss this job. According to my statement, I went in on the morning of December 5 to discuss when my next job was going to be. According to employer, no work was available that day and would call me later to discuss any job opportunities for the next day. I never received any more phone calls on December 5 or December 6 to report to work. According to exhibit 12 pages 3 of 6, there are several clerical errors on discussing several issues. Clerical issues are when the offer was made? 12/5/2012. I already worked on December 3, 2012 so how can I accept the

offer when I already accepted the offer last week of November 2012. When was it to start? 2/25/2013 8is, how can I start working this date when the job offer was accepted during the last week of November 2012? According to exhibit 12 pages 6 of 6, when was the clmt paid for his services on 12/3/2012? All paychecks were issued 2/14/12, so it was mailed to him that day. He didn't request his payment before our regular scheduled payday. It's impossible to be paid in February 14, 2012 when I was not working for the company until December 3, 2012. The facts presented to the Judge were incorrect. The judge couldn't make a fair decision based on the incorrect facts that were reported by case manager Leyla Barthome of the Idaho Department of Labor.

The second issue is the overpayment of Unemployment Benefits of \$1372. Based on an earlier appeals dated January 31, 2013; the judge determined that I was qualified to receive unemployment benefits from the Major Base Employer, Commercial Tire Company. Why is the second judge overturning the first judge's ruling based on Right Now Heating and Air Conditioning one day employment to deny my entire benefit for accidentally making a false statement for one day earnings where I failed to report my status of the week ending December 8, 2012?

Mr. LeBow timely appeals.

ISSUE

Whether the Industrial Commission erred in its' decision denial of Unemployment Benefits for appellant.

ARGUMENT

Whether the Industrial Commission erred in its' decision denial of Unemployment Benefits for appellant.

The basis for the appeal is that I feel that I didn't receive a fair hearing, nor I was advised to ask for a new hearing or reopen the hearing to discuss any additional evidence that I could submit in support of my claim. I submitted additional evidence of phone records where the employer alleged that he called to discuss another assignment for the on call position to be assigned on the dates in question. I feel that I did everything right after many discussions with the unemployment office counsel to look for another with guaranteed hours vs. on call part time position. I needed a job that would guarantee and pay to support myself. I honestly believed that I quit an on call position for a good cause for a part time position with guaranteed hours and pay. I just couldn't sit around all day and day to day waiting on a phone call from Right Now, INC for a work assignment. I took initiative to look for another part-time position that would guarantee hours and pay. I had no training in the HVAC field and I didn't comfortable working in that environment. I feel that I am entitled receiving in receiving unemployment benefits from the State of IDAHO. I have experienced severe anxiety because of the unnecessary and not able make ends meet. I wish appeal the overpayment of \$1372 owed to State of IDAHO for the benefits.

I feel that I quit an on call position for another position with guaranteed hours and pay. I feel that I quit my job with good cause connected with the on call employment. I feel that I am entitled to waiver of overpayment of unemployment benefits. I feel that my unemployment benefits should be restored in its' capacity.

The major reason for quitting Right Now Heating and Air Conditioning was because of my anxiety and ADHD; which I felt that I was going to be a hindrance in learning the trade. After speaking with the unemployment office, the counselors stated it was a good reason because of my disabilities and lack of skills to quit the position at Right Now Heating and Air Conditioning to find something more comparable. I stated that to the judge during my appeal hearing.

In conclusion the loss of my job at Commercial Tire was devastating which increased my anxiety levels and the way I was treated by other employees at the company. I worked almost two years with the company and I feel that I deserved the unemployment benefits entitled to me from the first judge's ruling. Part of your consideration should be based on the evidence on my phone records for the Unemployment Office, I was asked to stop calling for advice on my situation dealing with appeals or claims. None of the issues that are part of the appeal were addressed during the second hearing that denied my benefits. Therefore the second judge didn't have all facts presented.

CONCLUSION

Wherefore, for the reasons as stated above, Appellant/Claimant respectfully requests that the Idaho Industrial Commission order for denial of Unemployment Benefits be reversed and vacated restoring Unemployment Benefits due to claimant. Also Appellant/Claimant respectfully requests the Overpayment of Unemployment Benefits denial waiver to be reversed and vacated.

Dated this 7th day of November 2013.

Chance LeBow
Chance M. LeBow
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November 2013. I served two true and correct copies of the foregoing **APPELLANT'S BRIEF**, by the method as indicated below:

TRACEY K ROLFSEN
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BOISE, ID 83735

U. S. Mail, postage prepaid
 Hand Delivered to the Deputy
Attorney General's mailbox
at the Supreme Court