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Boyd-Davis v. Macomber Law Appellant's Brief Dckt. 41523

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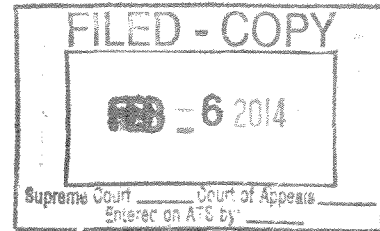
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IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS,)
) Supreme Court Docket No. 41523-2013
) Industrial Commission No. 3509-2013
 Claimant/Appellant,)
)
 v.)
)
 MACOMBER LAW, P.L.L.C.,)
)
 Employer/Respondent,)
)
 and)
)
 IDAHO DEPARTMENT OF LABOR,)
)
 Respondent.)



APPELLANT'S BRIEF

APPEAL FROM THE IDAHO INDUSTRIAL COMMISSION

CHAIRMAN THOMAS P. BASKIN PRESIDING

TERRI BOYD-DAVIS
12738 N. Strahorn Rd.
Hayden, ID 83835

Appellant in Pro Se

MACOMBER LAW PLLC
P.O. Box 102
Coeur d'Alene, ID 83816-0102

Employer/Respondent

Tracey K. Rolfsen
Deputy Attorney General
IDAHO DEPARTMENT OF LABOR
317 W. Main St.
Boise, ID 83735

Respondent

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I. STATEMENT OF THE CASE

A. Nature of the Case

After being laid off from the paralegal position she had held for over four years due to a slow down in her employer's work, Claimant/Appellant Terri Boyd-Davis ("Boyd-Davis") applied for and began receiving the unemployment benefits to which she was entitled. After a diligent search for a new job, she was reemployed in less than three months. During her short period of unemployment, the Idaho Department of Labor ("IDOL" or "Department") cut off her benefits for a period of three weeks – not because she was not entitled to those benefits but because she did not respond to IDOL's request for additional information by the deadline specified in the letter IDOL purportedly mailed to her but which Boyd-Davis did not receive.

Upon receiving notice that her unemployment benefits had been discontinued and being given a deadline in which to protest this decision, Boyd-Davis submitted her Protest of Determination by the deadline provided. She received an email from the IDOL and spoke with a representative on the telephone, providing the information it required from her – her work search contacts for a particular week. The information she then provided was deemed adequate by the IDOL and her benefits were restored effective March 31, 2013. Her benefits were not restored for the three-week period prior to that date, however.

Boyd-Davis appealed the IDOL's decision to deny her benefits for the three-week period. After a telephonic hearing before the Appeals Examiner, a Decision was issued confirming the denial of Boyd-Davis' benefits. The stated issue in the Decision was "whether the claimant failed to provide information pertaining to the on-line eligibility review, according to §72-

1366(1) of the Idaho Employment Security Law.” Although in its Findings of Fact, the Examiner found that Boyd-Davis had provided the information requested, Boyd-Davis’ benefits for the three-week period were not restored because she had not provided them by the deadline contained in the letter she had not received. The Examiner acknowledged Boyd-Davis’ assertion that she had not received the letter, but the Examiner relied upon Idaho Code §72-1368(5) in determining that “[u]nder Idaho law, service by mail is deemed complete on the date of mailing,” and accordingly determined that the letter was deemed served on Boyd-Davis.

Boyd-Davis challenges the applicability of §72-1368(5) to the facts of this case, arguing that its presumptions of service do not apply to the letter purportedly mailed to her by the IDOL but that it applies specifically and solely to the notices delineated in that statute. Boyd-Davis timely appealed the Decision of the Appeals Examiner to the Idaho Industrial Commission (“Commission”), urging a literal interpretation of the unambiguous statute and entreating it to “liberally construe the Employment Security Law to the end that its purpose be accomplished.” The Commission, however, affirmed the Decision of the IDOL. Boyd-Davis filed a Motion for Reconsideration of the Decision and Order issued by the Commission. Her Motion for Reconsideration was denied. The Order Denying Request for Reconsideration stated that “the Commission has rejected Claimant’s restrictive interpretation of Idaho Code Section 72-1368(5).”

Boyd-Davis appeals from the Commission’s Order Denying Request for Reconsideration and asks the Idaho Supreme Court to properly interpret the applicable law and to ensure that the purpose of the Idaho Employment Law is accomplished. She implores the high court to liberally

construe the law and ensure that the funds set aside to pay benefits to the citizens of this state who, like Boyd-Davis, are unemployed through no fault of their own, are used for this purpose rather than allowing the IDOL to apply stringent standards, unsupported by Idaho law in denying benefits to those who are eligible to receive them.

B. Course of Proceedings

1. On March 27, 2013, Boyd-Davis mailed to IDOL a “Protest of Determination” of the “Eligibility Determination” dated March 19, 2013 that had been sent to her by the IDOL in which she was first informed that her unemployment benefits had been revoked. (Ex. 6).

2. On April 9, 2013, the Appeals Bureau of the IDOL mailed a “Notice of Telephone Hearing” to Boyd-Davis. (Ex. 1).

3. A telephonic hearing was held on April 18, 2013. On April 19, 2013, a Decision of Appeals Examiner was issued confirming the denial of Boyd-Davis’ benefits. (R., p. 1-5).

4. On May 3, 2013, Boyd-Davis filed an Appeal of Decision of Appeals Examiner with the Idaho Industrial Commission. (R., p. 6-11).

5. On July 25, 2013, the Idaho Industrial Commission issued its Decision and Order affirming the Decision of the Appeals Examiner. (R., p. 16-20).

6. On August 14, 2013, Boyd-Davis filed a Motion for Reconsideration of the Decision and Order issued by the Commission. (R., p. 21-36).

7. On September 9, 2013, the Commission issued its Order Denying Request for Reconsideration. (R., p. 38-41).

8. On October 18, 2013, Boyd-Davis filed a Notice of Appeal with the Commission wherein she appealed this matter to the Idaho Supreme Court. (R., p. 42-44).

C. Statement of Facts

1. Appellant Terri Boyd-Davis, a resident of Hayden, Idaho, was employed as a paralegal by Macomber Law, PLLC (“Macomber Law”) located in Coeur d’Alene, Idaho from October 2008 through January 2013.

2. Boyd-Davis was laid off from her job with Macomber Law on January 27, 2013 due solely to a slow down in work.

3. Boyd-Davis applied for unemployment benefits (“UE benefits”) from the Idaho Department of Labor on January 27, 2013.

4. The IDOL found that Boyd-Davis was eligible for UE benefits, and after the passage of the waiting week, Boyd-Davis began to receive her weekly benefits.

5. Boyd-Davis sought reemployment and on a weekly basis, she completed the required report through IDOL’s website in order to continue to receive her UE benefits.

6. On March 6, 2013, the IDOL alleges that it mailed a letter, identified in its bottom left-hand corner as an “Online Review Letter” to Boyd-Davis’ home address (“Online Review Letter”). The letter appears to be a computer-generated form letter. It is not signed by anyone. It does not indicate whom within the IDOL it is from. It does not have a certificate of mailing attached to it. The letter states: “You have been selected to provide additional information concerning your unemployment insurance claim for the week ending 03/02/2013.” It states:

“You must provide this information by 5:00 p.m. (Mountain Time Zone) on 03/15/2013. Failure to complete the process by this date and time will result in your benefits being denied.” (Ex. 3).

7. Boyd-Davis did not receive the Online Review Letter. (Tr., p. 8, L. 19-23).

8. On or about March 21, 2013, Boyd-Davis received in the mail from the IDOL a document entitled “Eligibility Determination,” Form 57-961 with a listed “date of mailing” of 03/19/2013 and a listed “last day to protest” of 04/02/2013. It included a “**Decision**,” which stated:

The evidence in the record establishes the claimant has failed to complete the online eligibility review necessary to maintain continued eligibility. The claimant is ineligible for benefits effective 03/10/2013 and continuing until such time as the claimant contacts the Idaho Department of Labor office shown above.

It also included a “**Summary of Facts**,” which stated: “The claimant failed to complete the required eligibility review. This is a requirement to maintain continued eligibility.”

It also included a “**Law**” section, which stated: “If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant *may* be denied benefits until the information is provide.” (Emphasis added.)

Under another section entitled “**Protest Rights**,” it stated: “If you disagree with this determination, you have fourteen (14) days from the date of mailing to file a protest.” (Ex. 5).

9. On March 27, 2013, Boyd-Davis prepared and mailed to IDOL a “Protest of Determination.” In her Protest, she stated that “to [her] knowledge, [she has] provided the IDOL with all information requested of [her].” She additionally stated, “If the IDOL requires

additional information from me, please identify what that information is so that I may provide it.

I am confused as to what the ‘required eligibility review’ even is.” (Ex. 6).

10. As she had done every week since she began receiving UE benefits, on March 29, 2013, Boyd-Davis logged onto the IDOL website to complete her weekly report. The system would not allow her to access the report. (Tr., p. 10, L. 15-22).

11. On March 29, 2013, Boyd-Davis received an email from the IDOL. The email asked her to call the IDOL on Monday, April 1. Boyd-Davis phoned the IDOL on April 1 and provided her work search contacts, which was the additional information the IDOL sought from her. The IDOL found that the work search contacts she provided were adequate. (Tr., p. 6, L. 11-23).

12. The IDOL representative that Boyd-Davis spoke with on the telephone on March 29 informed her that her benefits would be reinstated but that there would be a three-week period during which she would not receive benefits. She also told Boyd-Davis that the reason the system would not allow her to complete her online report was because she had not provided information regarding her work contacts by the date requested in the Online Review Letter. (Tr., p. 9, L. 17-25, p. 10, L. 1-13). Boyd-Davis’ UE benefits were denied effective March 10 through March 30, 2013. (Tr., 7, L. 4-5).

13. On April 9, 2013, the Appeals Bureau of the IDOL mailed a “Notice of Telephone Hearing” to Boyd-Davis. Attached to the Notice was a Certificate of Service, which certified that the Notice was mailed on April 9, 2013 to Boyd-Davis, to Macomber Law, and to IDOL to

the attention of “Claims Specialist. The Certificate of Service was signed by the person who mailed it. (Ex. 1).

14. A telephonic hearing was held on April 18, 2013. Boyd-Davis participated in the telephonic hearing from her place of employment because she had by then obtained a new job. (Tr., p. 9, L. 23-24).

15. During the hearing, Boyd-Davis was asked by the Examiner whether she has had any problems with mail delivery at her address. Boyd-Davis said that she had problems with the mail at times. She explained that she has a mailbox at the end of her driveway and that sometimes the mail carriers put mail in her box that belongs to other people and when that happens, she puts the mail back in the mailbox, stating “not at this address.” She said she was sure the same thing probably happens with mail intended for her. When asked by the Examiner if she had ever filed a complaint with the post office, Boyd-Davis responded that she had contacted the post office in the past but that it had probably been a year or two since she had done that. (Tr., p. 11, L. 6-23).

16. Boyd-Davis explained to the Examiner during the hearing that “there would be no reason for [her] to not have provided [the work search contacts to the IDOL] by the date on the [Online Review Letter]” but that she “simply was not aware that it was being asked of [her], which is why once [she] did realize that was being asked, [she] provided it.” She emphasized that she “certainly would not have just neglected that, knowing that [her] benefits...would be halted when...[she] was unemployed [and she] certainly needed [her] benefits.” (Tr., p. 12, L. 8-16).

17. The total UE benefits that Boyd-Davis received during her time of unemployment was seven weeks worth of benefits. She did not receive three weeks worth of benefits for the period of March 10-30, 2013 for the reason that she had not provided her work search contacts by the date provided in the Online Review Letter.

II. STANDARD OF REVIEW

When reviewing a decision of the Industrial Commission, this Court freely reviews questions of law. *Uhl v. Ballard Med. Prod., Inc.*, 138 Idaho, 653, 657, 67 P.3d 1265, 1269 (2003).

The reviewing court may reverse or modify the agency act or decision if substantial rights of the parties have been prejudiced by administrative findings which violate constitutional or statutory provisions, or are in excess of authority, or made upon unlawful procedure, or are clearly erroneous, arbitrary, or capricious. *Greenfield Village Apts. v. Ada County*, 130 Idaho 207, 209, 938 P.2d 1245, 1247 (1997).

The Court exercises free review over all questions of law and any legal conclusions reached by the agency. See *Qualman v. State Department of Employment*, 129 Idaho 92, 922 P.2d 389 (1996); *Crooks v. Inland 465 Ltd. Partnership*, 129 Idaho 43, 921 P.2d 743 (1996).

Erroneous conclusions of law made by an agency may be corrected on appeal. See *Love v. Board of County Comm'rs of Bingham County*, 105 Idaho 558, 6721 P.2d 417 (1983).

III. ISSUES PRESENTED ON APPEAL

1. Did the Industrial Commission err when it found that mailings other than those specifically delineated in Idaho Code §72-1368(5) are entitled to a presumption of service pursuant to this section?
2. Did the Industrial Commission err when it determined that Idaho Code §72-1368(5) should not be interpreted according to its plain and clear language?
3. Did the decision by the Department of Labor and upheld by the Industrial Commission to deny claimant her benefits defeat the purpose of the Idaho Employment Security Law as defined in Idaho Code §72-1302?

IV. ARGUMENT

The Idaho Department of Labor denied unemployment benefits to Claimant/Appellant Terri Boyd-Davis for a three-week period from March 10 – March 30, 2013. On January 27, 2013, Boyd-Davis was laid off from the paralegal job that she had held for over four years when her employer experienced a slowdown in business. She immediately applied for UE benefits, was found eligible for benefits, and began receiving benefits after the one-week waiting period had passed. She received benefits for five weeks, then the IDOL cut her benefits for three weeks. When her benefits were restored on March 30, 2013, she continued to receive benefits for another two weeks until she obtained new employment in April, at which time her benefits then ceased.

The reason why Boyd-Davis did not receive benefits for three weeks in the midst of her period of unemployment was *not* because IDOL found her to be ineligible for benefits; rather, it

was solely because IDOL found she had “fail[ed] to timely provide information regarding her work search contacts.” (R., p. 2). IDOL acknowledges that Boyd-Davis did provide the information regarding her work search contacts and further acknowledges that the information she provided was deemed adequate. The key issue here is IDOL’s assertion that the information she provided was not timely.

Boyd-Davis asserts that the only reason she did not provide the information by IDOL’s deadline was because she never received the letter IDOL purportedly sent to her that provided the deadline by which she was required to provide the requested information. Thus, this case revolves around whether Boyd-Davis was required to provide information by a date contained in a letter that Boyd-Davis claims she never received.

The position of the IDOL and the Idaho Industrial Commission is that Boyd-Davis’ contention that she never received the letter is not relevant because it is their position that pursuant to Idaho Code 72-1368(5), the letter was deemed served on the date of mailing.

Boyd-Davis contends that the IDOL and the Commission have wrongly applied this section of Idaho’s Employment Law to the facts of this case. Boyd-Davis asserts that Idaho Code 72-1368(5) is an unambiguous statute that applies only to the notices it specifically delineates by name. She argues that the IDOL and the Commission have erred in their statutory interpretation of Idaho law. She additionally argues that the rigorous standards the IDOL has demanded of her in this case – in a situation where the Department had leeway – have resulted in defeating the very purpose of Idaho’s Employment Law.

- A. Idaho Code section §72–1368(5) applies specifically and exclusively to service of the five notices enumerated therein and the Online Review Letter purportedly mailed to Boyd-Davis by the Department of Labor on March 6, 2013 is not entitled to the same presumption of service.**

After conducting a hearing to determine if the IDOL had properly denied UE benefits to Boyd-Davis, the Appeals Examiner affirmed the Eligibility Determination dated March 29, 2013 wherein those benefits had been denied. (R., p. 1). In the Decision issued by the Appeals Examiner, the stated issue was “whether the claimant failed to provide information pertaining to the on-line eligibility review, according to §72-1366(1) of the Idaho Employment Security Law.” Relevant to this appeal were the “Conclusions” of law outlined in the Decision of the Appeals Examiner as follows:

The claimant asserts that she did not receive the [Online Review Letter]. Under Idaho law, service by mail is deemed complete on the date of mailing. Idaho Code 72-1368(5) (2004). In Striebeck v. Employment Security Agency, 83 Idaho 531, 366 P.2d 589, (1961), the Idaho Supreme Court held “[i]t is clear that the legislature intended that for the purpose of perfecting an appeal as provided in 72-1368, service of a notice of determination or redetermination shall be regarded and adjudged complete when delivered to the person being served on the date of mailing if mailed to such person at his last known address.” **Such presumptions also apply here.**

(R., p. 2). (Emphasis added.)

The Examiner then explained further:

The presumption that the notice was mailed and received is rebuttable, nevertheless, a party’s unsupported argument that he or she did not receive it is insufficient to rebut the presumption. Striebeck v. Employment Security Agency, 83 Idaho 531, at 536, 366 P.2d 589, 591 (1961). There is nothing in the record that would lead the Appeals Examiner to the conclusion that the claimant was the victim of an error of the U.S. Postal Service. As the claimant did not [] provide the information by the deadline benefits are denied for the weeks immediately preceding the date in which the claimant provided the requested information.

(R., pp. 2-3).

Boyd-Davis appealed the decision of the IDOL to the Idaho Industrial Commission wherein she argued that the Appeals Examiner relied upon a section of the Idaho Code and Idaho case law that concern appellate procedure and are inapplicable to the issue of this case. (R., pp. 8-9). The Commission issued its Decision and Order on July 25, 2013, in which it upheld the decision of the Appeals Examiner of the IDOL. In its Decision, the Commission stated what it found to be the “real issue in this case,” which is “whether Claimant can be held accountable for failing to comply with the Department’s request when she did purportedly not receive the Department’s letter regarding that request.” (R., p. 18). Relying on the same section of Idaho law as the IDOL had done, the Commission stated, “Idaho Code 72-1368(5) defines service. ‘A notice shall be deemed served if delivered to the person being served or if mailed to his last known address; service by mail shall be deemed complete on the date of mailing.’” (Id.).

The section of Idaho law on which the IDOL relied in denying benefits to Boyd-Davis and which the Commission affirmed applied to this case is Idaho Code 72-1368(5), which provides as follows:

All interested parties shall be entitled to prompt service of notice of determinations, revised determinations, redeterminations, special redeterminations and decisions. A *notice* shall be deemed served if delivered to the person being served, if mailed to his last known address or if electronically transmitted to him at his request and with the department's approval. Service by mail shall be deemed complete on the date of mailing. Service by electronic transmission shall be deemed complete on the date notice is electronically transmitted.

(Emphasis added).

While Boyd-Davis does not deny that this section “defines service” as the Commission asserts, she does deny that it applies to *letters mailed by the IDOL* and, thus, that it applies to the facts of this case. It applies to *notices*. This statute is in no way ambiguous; its meaning is clear. We can easily determine from it that “all interested parties are entitled to prompt service.” The question is - prompt service of what? That is also clear. Interested parties are entitled to prompt service of notices. The next question is – to what notices does this apply? That is also clear and spelled out. It lists by name the five notices to which this section applies, as follows: “determinations, revised determinations, redeterminations, special redeterminations and decisions.” Absent from this list are “Online Review Letters” or any letters for that matter. When this section then immediately states that “[a] notice shall be deemed served,” it is abundantly clear it is referring solely and specifically to the five notices it just delineated by name.

In its attempt to support its denial of benefits to Boyd-Davis based on Section 72-1368(5), the IDOL further erred in its reliance upon the *Striebeck* case. In *Striebeck*, this Court stated that the presumption of service applied “for the purpose of *perfecting an appeal* as provided in 72-1368.” (Emphasis added.) *Striebeck v. Employment Security Agency*, 83 Idaho 531, 534, 366 P.2d 589, 592 (1961). At the time when the Online Review Letter was purportedly mailed, it was prior to any appeal being filed and, thus, again this does not apply to this situation.

When the IDOL Examiner stated in its Decision that “[t]here is nothing in the record that would lead the Appeals Examiner to the conclusion that the claimant was the victim of an error of the U.S. Postal Service,” this is puzzling. (R., p. 3). Boyd-Davis testified that she did not

receive the letter. (Tr., p. 8, L. 19-23). Boyd-Davis also testified that in the past she had had problems with mail being delivered to the wrong address. (Tr., p. 11, L. 6-23). From that testimony, the Examiner could have concluded (or simply given Boyd-Davis the benefit of the doubt) that she was a “victim of an error of the U.S. Postal Service.” To say that “there is nothing in the record” to lead to the conclusion that the mail was not delivered to Boyd-Davis is to say that Boyd-Davis’ testimony was not believed because Boyd-Davis certainly testified to this fact. It appears that the statement “there is nothing in the record” means, rather, that there was no *proof* that the Online Review Letter was not received. But how is one supposed to “prove” that she “was the victim of an error of the U.S. Postal Service”? How is it even possible to “prove” that mail was *not received*? It simply is not possible to do so.

The Commission confused the issue of this case when it stated that “Claimant has the burden of proving her eligibility for benefits by a preponderance of the evidence whenever the claim is questioned.” (R., p. 18). The IDOL, however, acknowledges that Boyd-Davis proved her eligibility for benefits. In its Findings of Fact No. 4, it found that she “provided the information” and that the information provided was “appropriate.” (R., p. 2). The IDOL denied her UE benefits solely because Boyd-Davis “did not [] provide the information by the deadline [provided in the Online Review Letter].” (R., p. 3). And, in fact, the Commission itself agreed that the “real issue in this case” was “whether Claimant can be held accountable for failing to comply with the Department’s request when she did purportedly not receive the Department’s letter regarding that request.” (R., p. 18).

In this case, apparently because Boyd-Davis *could not prove* she had not received the Online Review Letter, her testimony was disregarded and the IDOL used a statute and case law that apply to notices in the appeal process to determine that the letter was deemed served and that the Department was, therefore, justified in denying her benefits. It decided this even though it admits that she was eligible for benefits, that she provided the information the Department sought, and that the information she provided was deemed adequate, and even though the Idaho Administrative Rule that applies here – IDAPA 09.01.30.425.07 – allows discretion in denial of benefits. It states that “[i]f a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant *may* be denied benefits until the information is provided.” (Emphasis added.)

1. The Industrial Commission erred in its interpretation of Idaho law when it applied a meaning to Idaho Code 72-1368(5) other than that provided by its plain and clear meaning.

In its Decision wherein it upheld the IDOL’s denial of Boyd-Davis’ UE benefits, the Commission accurately clarified Boyd-Davis’ argument, stating, “Claimant contends that Idaho Code 72-1368(5) only applies to Determinations and Decision and therefore does not cover the *letter* dated March 6, 2013 regarding the audit.” (R., p. 18). In its Decision, the Commission states:

Claimant advocates a very literal interpretation of Idaho Code 72–1368(5) definition of service. Her interpretation would imply that only Decisions and Determinations are entitled to the presumption of receipt by the intended party if sent to the address of record. Any other official correspondence would not be entitled to that same presumption. Claimant’s interpretation does not reflect the reality of the Department’s day-to-day business processes.

(Id.)

In dismissing Boyd-Davis' argument that this statute says what it means and means what it says, the Commission attempted to force this statute to apply to the Online Review Letter purportedly mailed by the Department to Boyd-Davis so it would apparently then "reflect the reality of the Department's day-to-day business processes." The Commission found that "[t]he 'letter' IDOL sent Claimant informing her that she had been selected for an audit of her work seeking activities was prepared and mailed using the same process that IDOL uses for preparing and mailing Determinations." The first problem with this finding is that there is no evidence in the record that this statement is true. No one testified as to "the process" IDOL uses for preparing and mailing letters or Determinations. The second and more significant problem with this finding is that, simply put, the law on which the Commission relies applies to notices of determination but does not apply to letters sent pre-appeal.

While the Commission states that the "same process" is used by the Department to mail letters as to mail determinations, it provides no support for this statement and provides no citation to the record from which we are to reach this conclusion. We are only able to make assumptions as to "the process" that was used by the IDOL in purportedly "preparing and mailing" the March 6, 2013 "Online Review Letter" by reviewing a copy of the letter itself (Exhibit 3). A review of the letter shows that: 1) No one signed the letter; 2) There is no indication as to who prepared or mailed the letter; and 3) There is no Certificate of Service attached to the letter. It is simply what appears to be a computer-generated form letter. We don't know who purportedly mailed the letter and no testimony was provided by anyone

asserting to have mailed this letter. An “assistant manager” of the IDOL testified during the telephone hearing as to what the IDOL’s records reflected was done by the Department’s staff. Her testimony was based on her review of the exhibits provided. (Tr., p. 5, L. 12-25, p. 6, L. 1-14). Exhibit 4, p. 2 indicates that on 3/5/13 “Work Search Verification Letter Generated.” The IDOL and the Commission have assumed that it was mailed and, despite Boyd-Davis’ testimony that she never received it, they have further assumed that there was no error in delivery by the Post Office.

- a) *In construing an unambiguous statute, it should be given its plain, usual and ordinary meaning.*

Chapter 1 of Title 73 of the Idaho Code is entitled “Construction of Statutes.” In Section 73-113(1) it explains the proper “[c]onstruction of words and phrases” in Idaho statutes as follows:

The language of a statute should be given its plain, usual and ordinary meaning. Where a statute is clear and unambiguous, the expressed intent of the legislature shall be given effect without engaging in statutory construction. The literal words of a statute are the best guide to determining legislative intent.

The Commission takes issue with Boyd-Davis’ position that nothing more should be nor need be read into Idaho Code 72-1368(5) because the meaning of the statute is clear. In its Order Denying Request for Reconsideration from which Boyd-Davis appeals, the Commission correctly stated that the “Claimant argues...that the Commission should apply the literal reading of Idaho Code Section 72-1368(5).” (R., p. 39). The Commission further correctly represents Boyd-Davis’ position when it stated: “Because IDOL’s notice of the audit was not a decision or

determination, Claimant contends that the literal language of the statute, *i.e.*, the service by mail presumption, does not apply to IDOL’s audit letter.” (Id.)

It is Boyd-Davis’ contention that the Commission erred in its interpretation of this statute. In its Order Denying Request for Reconsideration, it states: “[T]he Commission has rejected Claimant’s restrictive interpretation of Idaho Code Section 72-1368(5).” (R., p. 39). The Commission apparently believes that because a “very literal interpretation” of the statute does not “reflect the reality of the Department’s day-to-day business practices,” that it is acceptable to force this statute to apply to situations other than those to which it clearly explains it applies.

In Boyd-Davis’ Motion for Reconsideration of Decision and Order (R., p. 21-36), she made the following argument:

While there are numerous cases that make it clear that unambiguous statutes should be interpreted by their plain and clear language, a case that clearly addresses the issue here is found in *Matter of Permit No. 36-7200*, 121 Idaho 819 (1992). Therein, the Supreme Court states that “[t]he fundamental issue in this litigation is the interpretation of I.C. § 67-4308.” In that case, two governmental agencies, the Idaho Department of Water Resources (IDWR) and the Idaho Department of Parks and Recreation (IDPR) attempted to force a meaning upon the statute that was contrary to its plain meaning, much as the Industrial Commission does in the instant case. The Idaho Supreme Court discussed the rules of construction of statutory intent to clarify the agencies’ error...
Id. at 24.

She cited directly to the Court’s arguments in that case and its citation to other cases that confirmed “[s]tatutory interpretation always begins with an examination of the literal words of the statute” and “[t]he clearly expressed intent of the legislature must be given effect and there is no occasion for construction where the language of a statute is unambiguous. (*Id.* at 851-852).”
Id. at 25. She noted that in *Matter of Permit No. 36-7200* “[t]he Supreme Court then upheld the

district court's ruling, finding the lower court was correct in interpreting the statute according to its plain language." *Id.* She pointed out that in that case, the Supreme Court stated what is equally applicable to this case, which is:

While the plain words of the statute defy the agencies' concern over the purpose of the statute, the purpose of an unambiguous statute is not the concern of the courts when attempting to interpret a statute. This Court has stated that when the language of a statute is definite, courts must give effect to that meaning whether or not the legislature anticipated the statute's result. *Unity Light & Power Co. v. Burley*, 83 Idaho 285, 361 P.2d 788 (1961). Moreover, "[t]he wisdom, justice, policy, or expediency of a statute are questions for the Legislature alone.... It is the duty of the courts to interpret the meaning of legislative enactments without regard to the possible results." *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962).

Id. at 853. (Emphasis added.)"

Id.

While the IDOL and the Commission sincerely want Idaho Code 72-1368(5) to apply to the Online Review Letter, a review of this statute and its plain and unambiguous language reveal that it does not. The Commission erred in "reject[ing] Claimant's restrictive interpretation of Idaho Code section 72-1368(5)" and erred in finding the presumption of service provided for in this statute applies to the Online Review Letter. (R., p. 39).

B. The arbitrary decision by the Idaho Department of Labor to deny Boyd-Davis the benefits to which she was entitled resulted in defeating the purpose for which the Idaho Employment Law was enacted.

Boyd-Davis is representative of the exact persons for which the Idaho Employment Law was created in order to ensure their welfare – workers who are unemployed through no fault of their own. Yet, the uncompromising conditions the IDOL has required of the claimant in this

situation have resulted in defeating the very purpose for which the Idaho Employment Law was enacted as stated in Idaho Code 72-1302:

The public policy of this state is as follows: Economic insecurity due to unemployment is a serious threat to the well-being of our people. Unemployment is a subject of national and state concern. This chapter addresses this problem by encouraging employers to offer stable employment and by systematically accumulating funds during periods of employment to pay benefits for periods of unemployment. The legislature declares that the general welfare of our citizens requires the enactment of this measure and sets aside unemployment reserves to be used for workers who are unemployed through no fault of their own.

In its Decision and Order wherein the Commission affirmed the IDOL's denial of UE benefits to Boyd-Davis, it misstated the applicable Idaho Administrative Rule, as follows:

To ensure that a claimant meets all of the requirements necessary to qualify for unemployment benefits, including compliance with work-seeking requirements, IDOL has promulgated IDAPA 09.01.30.425.07 stating that a claimant who fails to provide the Department with all necessary information relevant to determining that claimant's eligibility *shall* be denied benefits until such information is provided.

(R., pp. 17-18). (Emphasis added.)

In fact, IDAPA 09.01.30.425.07 states that “[i]f a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant *may* be denied benefits until the information is provided.” (Emphasis added.) The IDOL's decision to deny benefits in this situation is discretionary, not mandatory. In the case of *Davenport v. State Dept. of Employment*, this Court stated that, “[i]t is clearly the intent of the legislation that benefits be granted or denied based upon matters of substance rather than mere form.” *Id.*, 650 P. 2d 634, 636, 103 Idaho 492 (1982).

The instant case is a case where the IDOL has denied the claimant benefits based upon matter of form. Benefits were not denied to Boyd-Davis because she was not eligible to receive them. Benefits were not denied to her because she did not provide the information the IDOL requested of her. Benefits were not denied because the information she provided was not deemed adequate. Benefits were denied because the information requested of her was not provided by the deadline requested in a letter that the claimant claims she never received.

Benefits were denied because Boyd-Davis was unable to prove something that is impossible to prove – that she did not receive a piece of mail. Her testimony that she didn't receive the mail was discounted while the Department attempted to force a statute to mean something it does not in order to justify the IDOL's denial of benefits to her. In its Order Denying Request for Reconsideration, from which Boyd-Davis appeals, the Commission stated, “[c]laimant has not shown that an error of the U.S. Postal Service delayed delivery of the IDOL audit.” Of course, she did not show that – it is impossible to show that!

The IDOL and the Commission need to revisit the purpose of Idaho's Employment Law:

The Employment Security Act was enacted to alleviate the hardships of involuntary unemployment and will be construed liberally to effectuate that purpose. *Smith v. Department of Employment, supra; In re Potlatch Forests, Inc.*, 72 Idaho 291, 240 P.2d 242 (1952). As Justice Cardozo noted, in *Chas. C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 593, 57 S.Ct. 883, 893, 81 L.Ed. 1279 (1937), “[a]n unemployment law framed in such a way that the unemployed who look to it will be deprived of reasonable protection is one in name and nothing more.” It is clearly the intent of the legislation that benefits be granted or denied based upon matters of substance rather than mere form, and the act will be construed to effectuate that intent.

Id. at 636.

Boyd-Davis, during her short period of unemployment, looked to Idaho's Employment Law expecting protection and some extent of economic security. By arbitrarily denying her benefits when she needed them and was eligible to receive them, the purpose for which this law was enacted was defeated. Boyd-Davis appeals to Idaho's high court to right this wrong.

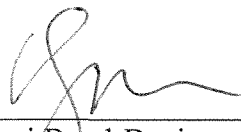
V. CONCLUSION

The Commission erred in its application and interpretation of the law. The IDOL held the claimant to an impossible standard and the Commission's decision affirming IDOL's denial of Claimant's benefits resulted in violating the very purpose for which of the Idaho Employment Law was enacted.

The Order Denying Request for Reconsideration should be overturned and the IDOL should be ordered to pay to Claimant Terri Boyd-Davis the UE benefits for the period of March 10-30, 2013 to which she is entitled.

Respectfully submitted,

DATED: 2-3-2014

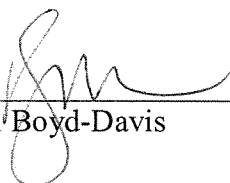


Terri/Boyd-Davis
Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of February 2014, I caused to be served two true and correct copy of the foregoing document on the parties listed below in the manner indicated.

Tracey K. Rolfsen Deputy Attorney General IDAHO DEPARTMENT OF LABOR 317 W. Main St. Boise, ID 83735 <i>Respondent</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:
MACOMBER LAW PLLC P.O. Box 102 Coeur d'Alene, ID 83816-0102 <i>Respondent</i>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile:



 Terri Boyd-Davis