

3-17-2014

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

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS, )  
 )  
 Claimant/Appellant, )  
 )  
 vs. )  
 )  
 MACOMBER LAW, P.L.L.C., )  
 )  
 Employer/Respondent, )  
 )  
 and )  
 )  
 STATE OF IDAHO, )  
 DEPARTMENT OF LABOR, )  
 )  
 Respondent. )

---

SUPREME COURT NO. 41523  
 BRIEF OF RESPONDENT  
 DEPARTMENT OF LABOR

ON APPEAL FROM THE INDUSTRIAL COMMISSION  
 STATE OF IDAHO  
 THOMAS P. BASKIN, CHAIRMAN

CLAIMANT

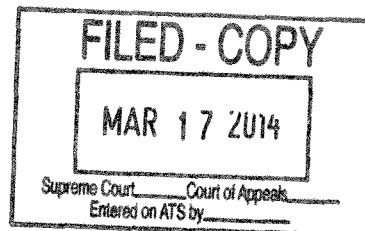
IDAHO DEPARTMENT OF LABOR

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

BY: LAWRENCE G. WASDEN  
 ATTORNEY GENERAL  
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EMPLOYER

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



IN THE SUPREME COURT OF THE STATE OF IDAHO

TERRI L. BOYD-DAVIS, )  
 )  
 Claimant/Appellant, ) SUPREME COURT NO. 41523  
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 vs. ) BRIEF OF RESPONDENT  
 ) DEPARTMENT OF LABOR  
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 MACOMBER LAW, P.L.L.C., )  
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 Employer/Respondent, )  
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 and )  
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 STATE OF IDAHO, )  
 DEPARTMENT OF LABOR, )  
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 Respondent. )  
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 \_\_\_\_\_ )

ON APPEAL FROM THE INDUSTRIAL COMMISSION  
STATE OF IDAHO  
THOMAS P. BASKIN, CHAIRMAN

CLAIMANT

BY: TERRI L. BOYD-DAVIS  
12738 N. Strahorn Rd  
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EMPLOYER

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## STATEMENT OF THE CASE

(1) Nature of the Case:

Appellant, Terri L. Boyd-Davis, appeals an Industrial Commission (Commission) Decision concluding she was ineligible for unemployment benefits from March 10, 2013, through March 30, 2013, after she failed provide her work search documentation for the week ending March 2, 2013, in an online eligibility review because she believes the Commission improperly applied the law and improperly weighed the evidence.

(2) Course of the Proceedings Below:

When Appellant failed provide her work search documentation by March 15, 2013, for the week ending March 2, 2013, in an online eligibility review the Department mailed an Eligibility Determination to her on March 19, 2013, at her address of record 12738 N. Strahorn Rd., Hayden, Idaho 83835. Tr. p. 6, Ll. 2-14; Exhibit 5. In that Determination the Department concluded Appellant was not eligible for benefits because she failed to provide information. Exhibit 5.

After receiving the Determination, Appellant filed a request for an appeals hearing with the Department. Exhibit 6. On April 9, 2013, the Department mailed a Notice of Telephone Hearing to Appellant at her address of record 12738 N. Strahorn Rd., Hayden, Idaho 83835. Exhibit 1. The Notice informed Appellant that an appeals examiner would hold a hearing in the matter on April 18, 2013. After receiving the Notice of Telephone hearing Appellant participated in the hearing on April 18<sup>th</sup>. Based on documents made part of the record at the hearing, Claimant's testimony and the testimony of the Department's Kootenai County Assistant Manager Kim Roby, the appeals examiner affirmed the Determination in a Decision sent to

Appellant at her address of record 12738 N. Strahorn Rd., Hayden, Idaho 83835 on April 19, 2013. R. pp. 1-4.

After receiving the Appeals Examiner's Decision, Appellant filed a timely appeal of the decision to the Commission. R. pp. 6-11. The Commission issued its Decision and Order on July 25, 2013, based on a *de novo* review of the record that included the exhibits admitted by the appeals examiner at the hearing and an audio recording of the hearing. Idaho Code § 72-1368(7); R. pp. 16-20. The Commission concluded that the evidence in the record established that Claimant failed to provide her work search documentation for the week ending March 2, 2013, within the time frame prescribed by the Department and she was ineligible for unemployment benefits effective March 10, 2013 through March 30, 2013. R. p. 19. The Commission mailed its Decision and Order to Appellant at her address of record, 12738 N. Strahorn Road, Hayden, Idaho 83835. R. p. 20.

After receiving the Commission's Decision and Order, Appellant filed a timely Motion for Reconsideration asking the Commission to reconsider its application of Idaho Code § 72-1368(5) to the facts in this case. R. pp. 21-27. The Commission denied Claimant's request in an Order filed September 9, 2013. R. pp. 38-40. The Commission noted that Appellant had the burden of proof and she simply had not shown that postal error delayed delivery of the March 6th letter. R. pp. 38-40. The Commission mailed its Order to Appellant at her address of record 12738 N. Strahorn Road, Hayden, Idaho 83835. R. p. 40. After receiving the Commission's Order, Appellant filed a timely Notice of Appeal with this Court. R. pp. 42-44.

(3) Statement of Facts:

Appellant filed a claim for unemployment benefits on January 27, 2013. Exhibit 7. As part of the Reemployment and Eligibility Assessment (REA) program the Department mailed a



letter to Appellant at her address of record 12738 N. Strahorn Rd., Hayden, Idaho 83835 on March 6, 2013. Exhibit 3; Tr. p. 5, Ll. 24-25; p. 6, Ll. 1-2; p. 8, Ll. 7-10. In the letter, the Department told Claimant to complete an eligibility review process and provide her work search documentation for the week ending March 2, 2013. Exhibit 3; Tr. p. 6, Ll. 2-9. The letter gave Appellant until March 15, 2013 to provide her work search documentation. Exhibit 3; Tr. p. 6, Ll. 2-9. The Department also warned Appellant in the letter, “Failure to complete the process by this date and time will result in your benefits being denied.” Exhibit 3. Appellant did not provide her work search documentation by March 15, 2013. Tr. p. 6, Ll. 2-14; p. 10, Ll. 3-22.

On March 19, 2013, the Department mailed an Eligibility Determination to Appellant at her address of record 12738 N. Strahorn Rd., Hayden Idaho, 83835. Exhibit 5. In the Determination the Department found Appellant failed to complete an online eligibility review and denied her benefits until she contacted the Department with the information requested in the online eligibility review. Exhibit 5.

After Appellant received the Determination, she provided her work search documentation for the week ending March 2, 2013 on April 1, 2013. Tr. p. 10, Ll. 3-22. Claimant was eligible for benefits again after providing her work search documentation, beginning with the week ending April 6, 2013. Tr. p. 6, Ll. 24-25; p. 7, Ll. 1-13.

## ISSUES ON APPEAL

### I.

Is there substantial and competent evidence in the record to support the Industrial Commission’s findings and conclusion that Appellant failed to provide information as directed?

## II.

Did the Industrial Commission abuse its discretion when it refused to consider whether Appellant should be ineligible for benefits as a result of her failure to provide information as directed?

### STANDARD OF REVIEW

In an appeal from Commission decisions, this Court's review is limited to questions of law. Idaho Const. Art. V, § 9; *Pimley v. Best Values, Inc.*, 132 Idaho 432, 434, 974 P.2d 78, 80 (1999). Whether a claimant has satisfied statutory eligibility requirements is an issue of fact and that factual determination will be upheld if it is supported by substantial and competent evidence. *Henderson v. Eclipse Traffic Control and Flagging, Inc.*, 147 Idaho 628, 632, 213 P.3d 718, 722 (2009). "The factual findings of the Commission will be upheld provided they are supported by substantial and competent evidence." *Mussman v. Kootenai County*, 150 Idaho 68, 244 P.3d 212, 215 (2010). "Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion." *Id.*

It is for the Commission to determine the credit and weight to be given to the testimony admitted. *Bullard v. Sun Valley Aviation, Inc.*, 128 Idaho 430, 432, 914 P.2d 564, 566 (1996). "The Commission's findings will not be disturbed solely because there is conflicting evidence in the record or because the Court may have reached a different conclusion." *Mussman*, 244 P.3d at 215. The Commission's conclusions regarding the credibility and weight of evidence will not be disturbed unless the conclusions are clearly erroneous. *Oxley v. Medicine Rock Specialties, Inc.*, 139 Idaho 476, 479, 80 P.3d 1077, 1080 (2003). This Court views all facts and inferences in the light most favorable to the party who prevailed before the Commission. *Mussman*, 244 P.3d at 215.

“This Court will affirm the Commission’s determinations unless there is an abuse of discretion.” *Simpson v. Trinity Mission Health & Rehab of Midland L.P.*, 150 Idaho 154, 156, 244 P.3d 1240, 1242 (2010).

## ARGUMENT

### I.

There is substantial and competent evidence in the record to support the Industrial Commission’s findings and conclusion that Appellant failed to provide information as directed.

To be eligible for unemployment benefits a claimant must be genuinely attached to a labor market. *Claim of Sapp*, 75 Idaho 65, 70, 266 P.2d 1027, 1030 (1954). During the whole of any week a claimant claims benefits she must be actively seeking work. *Hudson v. Hecla Mining Company*, 86 Idaho 447, 450, 387 P.2d 893, 895 (1963); Idaho Code § 72-1366(4). Unemployment benefits are only available to claimants who seek work each week as required by the Department. Idaho Code § 72-1366(4)(a); IDAPA 09.01.30.575.09.

As a result, the determination of a claimant’s eligibility is not a one-time affair. *McCammon v. Yellowstone Company, Inc.*, 100 Idaho 926, 928, 607 P.2d 434, 436 (1980). There is no vested right to compensation upon an initial determination of eligibility. *Talley v. Unemployment Compensation Division*, 63 Idaho 644, 124 P.2d 784, 785 (1942). The initial determination is preliminary and determines only whether a benefit year is established and whether or not disqualification should be assessed at that time. An initial determination is not a final adjudication of the right to unemployment benefits. *Talley*, 63 Idaho at 645 124 P.2d at 785 (1942).

To determine whether a claimant is seeking work and meeting other eligibility requirements the law requires a claimant to provide the Department with all necessary

information pertinent to her eligibility. Idaho Code § 72-1366(1). A claimant may not withhold information even when an accurate and full disclosure would not alter her right to benefits. *Meyer v Skyline Mobile Homes*, 99 Idaho 754, 760, 589 P.2d 89, 95 (1979). IDAPA 09.01.30.425.07 provides that if a claimant fails to provide the Department with necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. “Once a claim has been established, the claimant must provide, upon request, a record of the claimant’s work search, in order for the department to assess the claimant’s compliance with personal eligibility requirements.” IDAPA 09.01.30.425.07.i

Whether a claimant has satisfied statutory eligibility requirements is an issue of fact and that factual determination will be upheld if it is supported by substantial and competent evidence. *Henderson*, 147 Idaho at 632, 213 P.3d at 722. “The claimant carries the burden of proving that all eligibility requirements have been met.” *Id.*

The Department sent a letter to Appellant asking her to provide her work search documentation for the week ending March 2, 2013, in an online eligibility review by March 15, 2013. Exhibits 3 and 4; Tr. p. 5, Ll. 24-25; p. 6, Ll. 1-8. The Department mailed the letter to Claimant at her address of record, 12738 N. Strahorn Road, Hayden, Idaho. Exhibits 3 and 4; Tr. p. 5, Ll. 24-25; p. 6, Ll. 1-8. When Appellant failed to report by March 15th the Department issued a Determination denying benefits until she provided the information. Exhibit 5.

The Department concluded Appellant was ineligible for benefits not because she failed to seek work, but solely because she failed to provide her work search documentation when requested to do so by the Department. Because Appellant has the burden of proof, she must demonstrate by a preponderance of the evidence that she did not fail to provide her work search documentation when requested to do so by the Department.

At the hearing, Appellant maintained that she did not receive the letter and had no notice she was required to provide her work search documentation. Tr. p. 8, Ll. 19-23. To determine the adequacy of a particular form of notice, due process requires a balancing of the interest of the state against the interest sought to be protected. *Jones v. Flowers*, 547 U.S. 220, 229, 126 S.Ct. 1708, 1715, 16 L.Ed.2d 415 (2006). Due process does not require the Department to provide actual notice, rather it is required to provide notice reasonably calculated under the circumstances to apprise interested parties, in this case Appellant, of the pendency of an action, or as in this case, the need to provide information to maintain her benefit eligibility. *Jones*, 547 U.S. at 226, 126 S.Ct. at 1715.

In *LU Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003), this Court announced three factors to consider in determining the adequacy of process: first, the importance of the private interest at stake; second, the risk of erroneous deprivation of rights given the processes at hand and the probable value, if any, of additional or substitute procedural safeguards; and third, the government interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *LU Ranching*, 138 Idaho at 608, 67 P.3d at 88.

In *Gary v. Nichols*, 447 F.Supp. 320 (D. Idaho 1978), the United States District Court for the District of Idaho reviewed the adequacy of the process an Idaho unemployment benefit claimant received in a case strikingly similar to this one. In *Gary*, as in this case, the Department sent Matthew Gary a “form-letter notice.” *Gary*, 447 F.Supp. at 326. In the notice the Department asked him to reply to his former employer’s request for redetermination by March 10, 1975, and “designate whether an interview was desired.” *Id.* Gary did not respond to the letter prior to that date because he was out of town. *Gary*, 447 F.Supp. at 321. When he did not

respond the Department issued a redetermination finding he was not eligible for benefits. *Gary*, 447 F.Supp. at 327-328. Gary challenged, as Appellant does here, the adequacy of the notice he received. *Gary*, 447 F.Supp. at 327-328. Gary also challenged the constitutionality of the Department's procedure for denying him benefits without a pre-termination hearing. *Gary*, 447 F.Supp. at 322.

The District Court held that Gary's interest in receiving unemployment benefits was a protected one. *Gary*, 447 F.Supp. at 322. The District Court concluded the nature of a claimant's interest as important, but nonquintessential, and determined it must weigh it with the risk of erroneous deprivation of such interest and the government interest. *Gary*, 447 F.Supp. at 324. The District Court determined that Idaho's scheme of notice and opportunity to be heard were constitutionally sufficient. *Gary*, 477 F.Supp at 326. "In short," the District Court held, "the government and public interest in the efficient and accurate administration of limited agency resources, the prevention of payment benefits to ineligible recipients with the necessarily attendant recovery costs, the other recipients' interest in prompt redeterminations, and the employer's public interest in protecting the fund, simply outweigh the private interest in maintaining the uninterrupted flow of unemployment benefits between initial and final determination." *Gary*, 447 F.Supp. at 325.

The District Court also determined that the notice in the form of the letter Gary received from the Department was sufficient. *Gary*, 447 F.Supp. at 327-328. In arriving at this conclusion the District Court also looked to Idaho Code § 72-1368 to determine whether the notice provided in the letter was adequate. *Gary*, 447 F.Supp. at 327. The District Court cited *Fouste v. Department of Employment*, 97 Idaho 162, 540 P.2d 1341 (1975). The Court noted that the case dealt with the failure to appeal within a statutory limit rather than the failure to respond within a

limit established by the Department, the Court found its reasoning applicable and persuasive. *Gary*, 447 F.Supp. at 327. The Court rejected Gary's argument that date of actual notice was required stating "that such a rule would allow one, by not reading his mail, to avoid timely service in every circumstance." *Id.* The Court determined that by statute Gary was deemed to have received notice on the date of mailing. *Id.* Nothing prevented the District Court, from adopting the rationale in § 72-1368(5) and nothing prevents the Commission from adopting the same rationale in determining whether Claimant met her burden of proof. R. p. 18 .

The rationale in § 72-1368(5) is based on a presumption recognized by many courts. The mail box rule provides that a letter that has been properly addressed and mailed is presumed to have been delivered to the addressee. *Hobson v. Security State Bank*, 56 Idaho 60, 57 P.2d 685, 688 (1936); *Schikore, v. Bankamerica Supplemental Retirement*, 269 F.3d 965 (9th Cir. 2001); *Nunley v. City of Los Angeles*, 52 F.3d 792 (9th Cir. 1995); *Miner v. Clinton County, New York*, 541 F.3d 464 (2nd Cir. 2008); *Texaco v. Phan*, 137 S.W.3d 763 (Tex. App. 2004); and *Waite Lumber Co. v. Carpenter*, 205 Neb. 860, 290 N.W.2d 655 (Neb. 1980). A document will be presumed to have been received unless there is probative evidence of non-receipt. *Schikore*, 269 F.3d at 964. Denial of receipt merely presents an issue of fact for the factfinder. *Hobson*, 56 Idaho 601, 57 P.2d at 688; *Nunley*, 52 F.3d at 796-797; *Schikore*, 269 F.3d at 964; *Waite Lumber*, 290 N.W.2d at 657.

The Commission is the ultimate fact-finder for determining unemployment benefit eligibility status. *Scrivner v. Service Ida Corporation*, 126 Idaho 954, 959, 895 P.2d 555, 560 (1995); Idaho Code § 72-1368(7). It operates under a relaxed evidentiary standard. *Mussman*, 244 P.3d at 217. The Commission is not governed by the same rules of evidence as a court of law. *Quinn v. J. R. Simplot Company*, 131 Idaho 318, 322, 955 P.2d 1097, 1101(1998). The

Commission's role is to weigh the conflicting evidence and determine the credit and weight given the testimony admitted. *Mussman*, 244 P.3d at 215. That is precisely what the Commission did in this case.

At the hearing, Roby testified that the Department sent Appellant the letter on March 6, 2013 to her address of record, 12738 N. Strahorn Road in Hayden, Idaho, 83835 as part of the REA process.<sup>1</sup> Tr. p. 5, Ll. 24-25; p. 6, Ll. 1-9 She offered a copy of the letter sent and the Department records indicating the letter was generated by computer on "3/5/13 6:15 PM." Exhibit 4. In *Schikore*, the Ninth Circuit Court of Appeals held that a sworn statement that the letter was mailed is credible evidence for purposes of the mail box rule. *Schikore*, 269 F.3d at 964. The Commission found Roby's testimony credible. R. p. 18. The Commission could also conclude that evidence of the Department's routine practice is relevant to prove it acted in conformity with that practice on this occasion. *Hansen v. City of Pocatello*, 145 Idaho 700, 703, 184 P.3d 206, 209 (2008). There was no evidence in the record that the letter was returned to the Department.

Claimant acknowledged 12738 N. Strahorn Road, Hayden, Idaho 83835 was her mailing address. Tr. p. 8, Ll. 7-10. The Commission noted that "[t] here is no evidence in this record to suggest that Claimant has encountered difficulties receiving other documents IDOL has mailed her." R. 19. Claimant received the Determination, the Appeals Examiner's Decision, the Commission's Decision and its Order on Reconsideration without any problem. Although Claimant testified that she did not receive the letter, she did not provide any evidence beyond her denial to corroborate her testimony. Tr. p. 8, Ll. 19-21. When the appeals examiner asked

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<sup>1</sup> The REA program was instituted by the United States Department of Labor to address the reemployment needs of unemployment insurance claimants and to prevent and detect improper payments. [www.social.dol.gov/blog/reemployment-eligibility-assessments-rese/](http://www.social.dol.gov/blog/reemployment-eligibility-assessments-rese/); UIPL No. 10-12.



Appellant if she had any problems with her mail delivery, Appellant could only speculate that “they do mix up the mail when they are delivering it from house to house.” Tr. p. 11, Ll. 16-17. Appellant conceded that she had not complained to the post office for a year or two. Tr. p. 11, Ll. 18-23. The Commission weighed the evidence and concluded a preponderance of the evidence indicated that the letter the Department mailed to Appellant on March 6th was delivered to her address of record. R. p. 19. Both Roby and Appellant testified that Appellant did not provide the information the Department requested until April 1, 2013. Tr. p. 6, Ll. 11-14; p. 10, Ll. 3-5.

This Court has held that the Commission's conclusions regarding the credibility and weight of evidence will not be disturbed unless the conclusions are clearly erroneous. *Oxley*, 139 Idaho at 479, 80 P.3d at 1080. The Commission’s factual conclusions are not clearly erroneous, substantial though conflicting evidence supports those factual findings.

## II.

The Department concedes the Industrial Commission abused its discretion when it refused to consider whether Appellant should be ineligible for benefits as a result of her failure to provide information as directed.

This Court employs the following three-part test to determine whether the Commission has abused its discretion: (1) whether the Commission correctly perceived the issue as one of discretion, (2) whether the Commission acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available, and (3) whether the Commission reached its decision by an exercise of reason. *Simpson*, 150 Idaho at 156, 244 P.3d at 1242. The rule provides that the Department “may” deny benefits until the information is provided when a claimant fails to provide the Department with a record of her work search. IDAPA 09.01.30.425.07.i This Court has construed the word “may” when it appears in

legislation as expressing the right to exercise discretion. *Rife v. Long*, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995).


In its Decision and Order the Commission misstated this rule. It stated, that a claimant “shall” be denied benefits until the information is provided. R. 18. Because it misstated the rule the Commission did not recognize that its decision under this rule was one of discretion.

In *Simpson*, the Commission failed to perceive the issue before them as one of discretion. *Simpson*, 150 Idaho at 156, 244 P.3d at 1242. This Court concluded that because it did not appear the Commission perceived the issue as one of discretion it therefore abused its discretion. *Simpson*, 150 Idaho at 157, 244 P.3d at 1243. In that case, the Court remanded the matter to give the Commission the opportunity to exercise its discretion. *Id.* Under the circumstances, the Department respectfully asks the Court do the same in this case.

#### CONCLUSION

Because the record contains substantial and competent evidence to support the Commission’s conclusion that Appellant failed to complete an online eligibility review of her work search activities when required to do so, the Department asks the Court to affirm the Commission’s Decision on that issue. The Department also asks the Court to remand the matter back to the Commission to allow it to exercise its discretion in determining how many weeks Appellant should be ineligible for benefits as a result of her failure to complete an online eligibility review when the Department asked.

Respectfully submitted,



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TRACEY ROLFSEN  
Deputy Attorney General  
Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 17<sup>th</sup> day of March, 2014, I served two true and correct copies of the foregoing Brief of Respondent Department of Labor upon each of the following by depositing said copies in the United States mail, first class, postage prepaid:

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