

6-5-2014

# Bell v. Idaho Department of Labor Appellant's Reply Brief Dckt. 41592

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IN THE SUPREME COURT OF THE STATE OF IDAHO

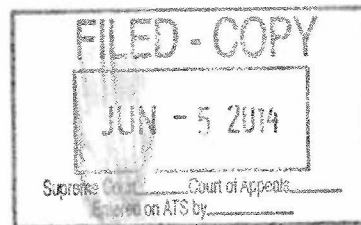
Idaho Court of Appeals

CHARLES C. BELL	)	
	)	
Claimant / Appellant,	)	
	)	SUPREME COURT NO. 41542
v	)	
	)	Docket No. 41592-2013
SEARS	)	
	)	Industrial Commission #4832-2013
Employer / Respondent,	)	
	)	
and	)	APPELLANT REPLY BRIEF
	)	
IDAHO DEPARTMENT OF LABOR	)	
	)	
Respondent.	)	

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## **RESPECT TO THE COURT**

With utmost respect to the Court, Claimant's objective is once again approaching this complicated legal issue and Appellant Reply Brief with truthfulness, sincerity, integrity, and brevity. Claimant, as a *ProSe* litigant, appreciates indulgence by the Court in his good faith effort to apprise the Court of the fact(s) and applicable law(s) on which he relies. Claimant also is appreciative for the Court in granting an extension for the filing of the Appellant Reply Brief.

## **STATEMENT OF THE CASE**

### (1) Nature of the Case

In the spring of 2013, Charles Christian Bell (Claimant) received from the State of Idaho Department of Labor (IDOL) several "Request(s) for Information" (Telephone Hearing [TH], Exhibit 17, P1; TH, Exhibit 18, P1), regarding his unemployment status during the nine weeks he filed for unemployment benefits. These requests precipitated the basis of an arduous legal process, throughout which Claimant adamantly and consistently refutes opinions, decisions, denials, conclusions, and rulings based on the IDOL and the State of Idaho Industrial Commission's (IIC) erroneous interpretation and subsequent application and reliance on the term "*willful intent*".

Claimant proposes to the Court there are only two certainties concluded at the end of this legal process: (1) "*Charles C. Bell (Claimant) was a seasoned filer and no stranger to the unemployment claim filing process when he filed his ninth claim for benefits.*" (TH, Exhibit 8, P7); and (2), during this legal process, the IDOL, the IIC, and the Claimant are discovered only

to blame of inadvertent, accidental and unintentional human error(s). Claimant acknowledges:  
“...*I am most willing to admit that I may have made mistakes.*” (TR, P8, LI. 15-16).

Claimant discovered error(s) and inconsistencies within the IDOL’s Customer Notes (TH, Exhibit 14, P1), through entries made by the IDOL; and the IDOL and IIC’s error regarding Claimant not advising IDOL of hours worked. (Brief of Respondent, P8, 1<sup>st</sup> and 2<sup>nd</sup> paragraphs). An error discovered made by IDOL was immediately dismissed and considered unintentional (Audio Recording; TH, Exhibit 22, P11; TR, P24, LI. 9-21, [note spreadsheet clearly shows handwritten additions]). Taken together, or even individually, these unrefuted facts do not constitute the legal definition of “*willful intent*” as erroneously concluded by the IDOL and IIC. Claimant’s argument, based on applicable law, supports his contention of innocence due to omissions which were simply accidental<sup>1</sup>. *Smith v. State Department of Employment*, 107 Idaho, 625, 628 691 P2d, 1240 (1984); *Meyer v. Skyline Mobile Homes*, 99 Idaho, 754, 775, 589, P2d 89, 95 (1979).

Claimant herewith sets forth to the Court, substantiating his assertions, and establishing these conclusions as irrefutable facts. Claimant refutes conclusions of the IDOL and IIC through contradictory citing(s) contained within Court record(s) relevant to this case. Assertions as conveyed within IDOL’s Brief of Respondent are cited, and effectively repudiated by the Claimant through conflicting citing(s) as follows:

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<sup>1</sup> “The legislature intended to disqualify those claimants who purposely, intentionally, consciously, or knowingly fail to report a material fact, not those whose omission is accidental because of negligence, misunderstanding or other cause.” (I.C. § 72-1366, P701)

Throughout the course of the proceedings, including within the Brief of Respondent, P1, the topic of the IDOL's pamphlet (TH, Exhibit 2B), its conveyance of Claimant's responsibility in estimating his hours as closely as possible, and contacting his local office when he received corrected earnings information, was discussed and cited as follows: "...that if he estimated his earnings he must contact his local office when he received correct earnings information." (TH, Exhibit 2B, P3 of 9, column 3; TR, P12, LI. 8-9). "The pamphlet (TH, Exhibit 2B) further states 'If you cannot determine the exact amount you earned, you must estimate weekly earnings as closely as possible. If you do estimate earnings, you must contact your local office when you receive the correct earnings information.'" (AR, P17 #6).

After notification from the IDOL in April 2013, regarding potential errors within the reporting period from September 2012 to February 2013, and "Request(s) for Information", Claimant, with frequency, persistence, and in a timely fashion, willingly responded and cooperatively assisted the IDOL in discovering and correcting potential errors (TH, Exhibit 18, P1; TH, Exhibit 34, P2 of 33, J., and last sentence of correspondence; TH, Exhibit 34, P22 of 33). With the request of the IDOL to the Claimant for him to obtain copies of paystubs from Sears in early April 2013 (TH, Exhibit 3, P2 of 5, [note Initial Fact Finding Date / Time Stamp 2013-04-01 14:08]), Claimant responded in a timely manner: "Copies received and distributed per previous instruction." (TH, Exhibit 14, P1, entry date 4/3/2013 by lalmanza).

With Claimant's request to Sears, Claimant subsequently received only corrected and updated earnings information. This earnings information provided by Sears was incomplete in



that they consisted of only paystubs, and as such were void of information detailing hours and wages earnings information. (AR, P51). This noted the first instance where Claimant received incomplete updated and /or corrected earnings information. Paystubs, as provided to Claimant by Sears, through a request by the IDOL<sup>2</sup> in April 2013, verify an unmistakable lack of relevant data (AR, P51). Claimant's paystubs, from previous employers, predictably displayed comprehensive data indicating hours worked and rate(s) of pay; whereas, Sears' paystubs are void of this data. Therefore, even considering *if* Sears had provided Claimant with these paystubs during the timeframe of purported errors, it would again present a myriad of issues, obstructing precise reporting of hours and wages earnings information.

The direct deposit screen shot from Claimant's checking account merely displays total dollar amount deposited after taxes and other deductions. It is void of hours worked, rate of pay, and associated taxes deducted (AR, P50). Prior to receipt of these requested paystubs, Claimant had no reasonable awareness, knowledge or access to the aforementioned paystubs from Sears. Claimant only became aware of paystubs in April 2013, which is more than 5 months after Claimant had made initial filing(s). (AR, P51[note print date of Wed Apr 03 09:34:50 EDT 2013, for paystub of 2012-10-05]). Claimant reiterates he had no access to, knowledge, or receipt of physical paystubs from Sears during disputed timeframe.

During the timeframe of spring 2013 through the summer of 2013, Claimant frequently conveyed a willingness to repay (unsubstantiated) overpayment(s) (TH, Exhibit 23, P3 of 3, from

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<sup>2</sup>Sears failed to provide requested information to IDOL (TH, Exhibit 3, P2, Date / Time Stamp 2013-04-01 14:08); and, Sears' management were unrepresented and absent in hearing of July 9, 2013 (TR, P2, Appearances).

email dated May 27, 2013; TR, P9, LI. 21-25, P10, LI. 1-2); yet, Claimant remains unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts, any opportunity extended by IDOL or IIC to Claimant to rectify any potential discovered errors, with what remain *incomplete hours and wages earnings information*.

It remains thoroughly implausible that Claimant forecast, calculate, or predict availability of this data, i.e., the corrected / updated hours and wage earnings information (which remains incomplete), for utilization by the Claimant in correcting and reporting of wages, as provided to the Claimant by Sears in April 2013. These paystubs, as requested by the IDOL, were subsequently forwarded through physical (hand-delivered) paystub(s), and direct submission to Ms. Chris Orders' desk at the Twin Falls IDOL, on April 4, 2013, (TH, Exhibit 3, P2 of 5, [note Initial Fact Finding Date / Time Stamp 2013-04-08 16:03]).

Initial fact finding (TH, Exhibit 3, P2 of 5, [note Initial Fact Finding Date / Time Stamp 2013-03-27 13:53]; [note Initial Fact Finding Date / Time Stamp 2013-04-01 14:08]; [note Initial Fact Finding Date / Time Stamp 2013-04-08 16:03]) establishes conflicting information in communication(s) from the IDOL, Sears, and Claimant. Additionally, Claimant contends the record keeping and earnings information received from Sears by the IDOL, with which the IDOL evidently also experienced difficulty in analyzing and calculating the hours and wages information from Sears' pay system, leaves reasonable opportunity for unintentional and inherent errors (TH, Exhibit 16, P1 of 14). Claimant, with the indulgence of the Court, contends these facts beg the question: If the IDOL is unable to accurately and correctly utilize wages and

earnings information as supplied by Sears, would a reasonable mind conclude with an expectation and requirement, the Claimant discern and correctly report hours and wages information before taxes, when presented the same information?

*“Claimant underreported earnings by almost \$2,000.00 and received unemployment benefits he was not entitled to receive.”* (Brief of Respondent, P1; TH, Exhibit 11; TH, Exhibit 33; TH, Exhibit 34, P10-11; TR, P23, LI. 11-16; P24, LI. 21-25; P26, LI. 1-18; P35, LI. 5-10).<sup>3</sup> Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts, associated with an apparently “new” spreadsheet (Brief of Respondent, P9-10), with data inconsistent with previously submitted spreadsheets. Exhibits as cited by IDOL, through submission of spreadsheet(s) by Claimant (TH, Exhibit 34, P10, and P11 of 33), display only total hours; no earnings are noted. Additionally, Claimant cites *“The Court will not consider arguments raised for the first time on appeal.”* (Brief of Respondent, P13, 1st paragraph; *Excell Construction, Inc. v. State Department of Labor*, 141 Idaho 688, 693, 116 P.3d 18, 23 [2005]).

Claimant was unaware of potential overpayments, and has worked diligently to discover the amounts overpaid by the IDOL, so Claimant could assist the IDOL in creating a resolution (AR, P60). IDOL and IIC’s assertions in this regard remain conflicting and erroneous by their own record (TH, Exhibit 3, P2 of 5 [note Initial Fact Finding Date / Time Stamp 2013-04-08 16:03; {04/10/13. 9:39 am, 3095elainem}]; TH, Exhibit 22, P9 of 11; TH, Exhibit 22, P10 of 11; TH, Exhibit 22, P11 of 11; TH, Exhibit 26, P1; TH, Exhibit 32, P1-4; TH, Exhibit 33, P1-2; TH,

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<sup>3</sup> Claimant references TR, P24, LI. 9-19, establishing handwritten calculations by IDOL.

Exhibit 34, P21 of 33; TH, Exhibit 34, P29 of 33). The dollar amount(s), as cited within Court records are inconsistent, depending on which spreadsheet or Telephone Hearing Exhibit is referenced. IDOL record states: “*There is a difference of over \$1,000 for the 4th quarter of 2012.*” (TH, Exhibit 3, P2 of 5 [note Initial Fact Finding Date / Time Stamp 2013-04-08 16:03]); the following cited spreadsheet(s) does not equate to dollar amount as cited above. (TH, Exhibit 22, P9 of 11, and P11; TH, Exhibit 26, P1) showing a difference of \$979.53. Claimant further presents a comprehensive spreadsheet (AR, P60) showing a difference of \$414.53.

“*The Industrial Commission (Commission) concluded Claimant willfully made false statements and willfully failed to report material facts each of those weeks.*” (Brief of Respondent, P1; R. P14-24). (Regarding the aforementioned referenced citing, please note absence of signature by Thomas P. Baskin, Chairman on Order [AR, P26]). Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts from the IDOL, IIC, to conclusively substantiate this contention, and erroneous conclusion of the IIC.

Claimant contends that even within the ascribed position of the IDOL and IIC through Meyer v. Skyline Mobile Homes (1979), there remains ambiguous language “...*does imply a conscious wrong*”, with further opportunity for scrutiny by the IDOL, IIC, and Court to clarify “conscious wrong”:

*Meyer v. Skyline Mobile Home, 99 Idaho, 754, 589, P2d 89 (1979): “(Willfully) implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the same sense of having an evil or corrupt or intent. It does imply a conscious wrong, and may be distinguished from an act maliciously or corruptly done in that it does not necessarily imply an evil mind, but is more nearly synonymous with ‘intentionally,’ ‘designedly,’ ‘without legal excuse.’ And therefore, not accidental.” Id. at 565, 201 P. at 1043.*

Claimant’s ascribed position(s) rely on *Smith v. State Department of Employment, 107 Idaho, 625, 628 691 P2d, 1240 (1984)*, and subsequently authority within the Idaho Supreme Court’s definition of “willful” as cited herewith, comments by Supreme Court Justice Huntley in 1984:

*Smith v. State Department of Employment, 107 Idaho, 625, 628 691 P2d, 1240 (1984): “In Meyer v. Skyline Mobile Home, supra, we reaffirmed earlier Idaho case law indicating that “willful” implies a conscious wrong. 99 Idaho at 761, 589 P2d at 96. We stated:*

*The Legislature’s presumed knowledge of our interpretations of willful in Archbold and Hall suggests that it intended to disqualify those claimants who purposely, intentionally, consciously, or knowingly fail to report a material fact, not those whose omission is accidental because of negligence, misunderstanding or other cause. (Citations omitted.)*

*To interpret the ‘willful’ requirement in I.C. § 72-1366 (1), otherwise, as was done in this case, would create a type of constructive knowledge. We therefore reverse the holding of the Commission that Claimant willfully failed to report a material fact in order to obtain unemployment insurance benefits, as being based upon the erroneous interpretation of ‘willful’.”*

(2) Course of the Proceedings Below

Claimant is in agreement with only one aspect regarding Course of the Proceedings Below.

*“In March 2013, the Department discovered a discrepancy between the weekly earnings*

*Claimant reported and the earnings Sears reported it paid him in its quarterly reports.” (Brief of*

Respondent, P2, 1st paragraph; TH, Exhibit 3). This is and remains the only and solitary substantiated and unrefuted fact presented by the IDOL and IIC within Course of the Proceedings Below. All other claims by IDOL and IIC are and remain unfounded, false, conjecture, speculative, resulting in erroneous and incorrect conclusions. Claimant refutes conclusions of the IDOL and IIC through contradictory citing(s) contained within Court record(s) pertinent to this case. Assertions as conveyed within IDOL's Brief of Respondent are cited, and effectively refuted by the Claimant through conflicting citing(s) as follows:

*“The Department also issued an Eligibility Determination finding Claimant was not unemployed during nine of those weeks.”* (Respondent Brief, P2; TH, Exhibit 31; TR, P17, LI. 12-18). Claimant references Sears' definition of “part-time” vs “full-time” employee. *“Based on the evidence in record, the Commission sets forth the following Findings of Fact. 1. Claimant worked for Employer. Employer categorized Claimant as a “part-time” employee. Claimant was not guaranteed full-time hours. However, there were weeks that Claimant would work “full-time” hours, but he would work less than full-time hours during the following weeks.”* (AR, P16, Fact #1). Claimant mistakenly acknowledged, relied upon and accepted to equate Sears' definition as a definitive and correct definition for “part-time” and “full-time” employment. (TR, P10, LI. 24, 25; TR, P11, LI. 1-10; AR, P18, last paragraph; TR, P10, LI. 24-25; and P11, LI. 1-10). These definitions, were repetitively enforced, conveyed, and utilized by Sears' management, Sears' floor supervisors, Sears' human resources, Sears' posted work schedules, and an ever-elusive and fluctuation of posted work schedules for reporting of hours worked to the IDOL. (AR, P30, paragraph 2.b.; AR, P47, #6). Claimant took credence in

employer's definition; yet, ultimately acknowledged in April 2013 (*after the acts of filing for unemployment benefits*), as inconsistent with that of the IDOL. However, at that time of Claimant's filing for unemployment benefits, Sears' definition of "part-time" and "full-time" employee was strictly and precisely relied upon by the Claimant as a correct, binding, usable and valid definition when filing for unemployment benefits.

### (3) Statement of Facts

Claimant is in agreement with only one aspect regarding IDOL and IIC's Statement of Facts "*Claimant filed for unemployment benefits eight times before filing once again on May 30, 2012.*" (Brief of Respondent, P3, 3rd paragraph; TH, Exhibit 8, P1). This is and remains the only and solitary substantiated and unrefuted fact presented within IDOL and IIC's Statement of Facts. All other claims by IDOL and IIC are and remain unfounded, false, conjecture, and speculative, resulting in erroneous and incorrect conclusions. Claimant refutes conclusions of the IDOL and IIC through contradictory citing(s) contained within Court record(s) pertinent to this case. Assertions as conveyed within IDOL's Brief of Respondent are cited, and effectively refuted by the Claimant through conflicting citing(s) as follows:

"...pamphlet that the Department mailed to him with his monetary determination." (Brief of Respondent, P4; TH, Exhibit 5, P12; TH, Exhibit 6). Claimant, during electronic filings from 2010 and thereafter, did not receive referenced pamphlet (TH, Exhibit 2b; TR, P4, LI. 18-24; TR, P12, LI. 12-14), and monetary determinations were deposited directly into Claimant's checking account (AR, P50).

*“The Department mailed the Claimant Benefit Rights, Responsibilities and filing Instructions pamphlet to Claimant each time he filed.”* (Brief of Respondent, P4). Claimant, during electronic filings from 2010 and thereafter, did not receive referenced pamphlet (TH, Exhibit 2B; TR, P4, LI. 18-24; TR, P12, LI. 12-14). After the onset of electronic filing, Claimant under no circumstances received a physical pamphlet from IDOL, and monetary determinations were deposited directly into Claimant’s checking account (AR, P50).

*“You are legally responsible to know the information in this booklet.”* (Brief of Respondent, P5; TH, Exhibit 2B, P1; TR, P18-20 [Claimant fails to understand / recognize previous TR, P18-20 citing, as having any relevance to aforementioned booklet]). Claimant, with the onset and during electronic filings from 2010 forward, did not receive referenced pamphlet (TH, Exhibit 2B; TR, P4, LI. 18-24; TR, P12, LI. 12-14).

Claimant, acknowledging receipt of pamphlets in the early phases of physical filing(s), unwittingly developed an overconfidence regarding his knowledge and understanding of what relevant information was contained within the pamphlets for assuring his accuracy within unemployment filing(s). This overconfidence, in conjunction with documented and indisputable personal extenuating circumstances (Appellant Brief, P8, “Extenuating Circumstances”; TH, Exhibit 34, P2 of 33, paragraph L; AR, P28, paragraph II., a., viii.), reasonably resulted in a misunderstanding of what was required when filing for unemployment benefits, imparting itself to unintentional inaccuracy. Claimant contends, in consideration of his overconfidence and



extenuating circumstances, it is sensible, logical, and reasonable to conclude that Claimant, within this timeframe, is to blame only of inadvertent, accidental and unintentional human error.

With exception of a single correspondence, when Claimant's wife was severely ill and undergoing medical treatment (TH, Exhibit 34, P32), Claimant diligently and cooperatively worked in facilitating the IDOL in investigating this matter (TH, Exhibit 18, P1; TH, Exhibit 19; TH, Exhibit 22; TH, Exhibit 23; TH, Exhibit 25; TH, Exhibit 26; TH, Exhibit 34, P2-3; TH, Exhibit 34, P10-11; TH, Exhibit 34, P22; TH, Exhibit 34, P29; TR, P8 LI. 17-19; TR, P9 LI. 21-25 and TR, P10 LI. 1-5; TR, P11, LI. 14-19; TR, P18 LI. 1-16; TR, P37, LI. 24-25 and TR, P38 LI. 1-14; AR, P7-9; AR, P60; [note the lack of response from Sears / Talx UC Express (TH, Exhibit 3, P2 of 5 Date / Time Stamp 2013-04-01 14:08)]. Additionally, Claimant, despite abundant correspondence and verbal testimony, with Claimant conveying his willingness, personal commitment of cooperation, and compliance to facilitate resolution and correction of discovered errors, Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts, where he was offered an opportunity to correct his earnings statements as established by protocol within pamphlet (Brief of Respondent, P1, LI. 4-5; TH, Exhibit 2B), which states, "...*that if he estimated his earnings he must contact his local office when he received correct earnings information*" (TH, Exhibit 2B, TR, P12, LI. 8-9; AR, P51). Claimant instead found himself in a defensive situation, and a contentious guarded compliance position with IDOL, and subsequently with the IIC (AR, P7, LI. 2.a.; TR, P11, LI. 14-19; TR, P18, LI. 1-6; TH, Exhibit 18, P1, last paragraph; TH, Exhibit 22, P1 of 11, [note Claimant notation on center right of page]; TH, Exhibit 34, P2 of 33, last paragraph).

“...he must follow all the instructions carefully, and if there was anything he did not understand, to ask his local office.” (Brief of Respondent, P5, middle of 2nd paragraph). Claimant, with confidence, knowledge, and forethought, did on at least four documented occasions, contact his local IDOL office with inquiry and questions to confirm his responses during the unemployment filing process were true and correct. (TH, Exhibit 14, see notes for dates 11/21/12, 12/28/12, 1/9/13; TH, Exhibit 34, P3 of 33, C., last week of April 2013, first week of May 2013, b.).

“...he was certifying that his answers were true and accurate and that he could be penalized for giving false answers or withholding information.” (Brief of Respondent, P6, end of 2nd paragraph; TH, Exhibit 7, P1; TR, P14, LI. 22-25). Claimant also cites within the aforementioned exhibit “You are certifying that your answers are true and accurate to the best of your knowledge.” (TH, Exhibit 7, P1, 2<sup>nd</sup> paragraph, 2<sup>nd</sup> sentence; TR, P14, LI. 22-24). All (purported) omissions and errors are strictly accidental and inadvertent, resulting from simple human error; this due to information, which at the time of filing for unemployment benefits, was believed and understood by the Claimant as true and correct. (AR, P49, Claimant’s Response).<sup>4</sup>

“In spite of all the instructions he received, when Claimant filed he did not multiply the actual hours he worked by his rate of pay...” (Brief of Respondent, P7, middle of 3rd paragraph; TH, Exhibit 23, P2 [refer to Q(uestion) 4 and A(nswer) 4]; TH, Exhibit 34, P26 [refer to last Q(uestion) and last A(nswer)]; TR, P9, LI. 1-6; P29, LI. 1-5). “The pamphlet further states if

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<sup>4</sup> “...and made to a claimant who could not reasonably have been expected to recognize an error in the wages reported. (I.C. § 72-1369(5)(a))

*you cannot determine the exact amount you earned, you must estimate weekly earnings as closely as possible. If you do estimate earnings, you must contact your local office **when you receive the correct earnings information.***” (AR, P17 #6). Claimant did estimate his weekly earnings to the best of his awareness, knowledge, and intent, with information available at the time of filing, and as closely as humanly possible. Through the request of the IDOL in early April 2013, Claimant only received corrected / updated earnings information consisting of paystubs from Sears, which remain incomplete in that they are void of hours and rates of pay. (AR, P51). These cumulative and indisputable facts leave relevant issues, with unanswered and unresolved questions remaining; thus, providing no opportunity for a definitive conclusion by the IDOL or the IIC in this regard.

*“Claimant actually worked 38.98 hours the week ending November 10, 2012, and earned \$364.64, but did not report that to the Department when he called in on November 21<sup>st</sup>”* (Brief of Respondent, P8, 1<sup>st</sup> paragraph; TH, Exhibit 11, P8 and TH, Exhibit 22, P9); and *“Claimant actually worked 41.38 hours the week ending December 15, 2012 and made \$386.90, but he did not report that to the Department when he called on December 28<sup>th</sup>”* (Brief of Respondent, P8, 2<sup>nd</sup> paragraph; TH, Exhibit 22, P9 of 11). It is implausible that Claimant reported information, which at the time was unknown and unavailable when he made those call(s) to the IDOL, on November 21<sup>st</sup> and December 28<sup>th</sup>, for pay weeks ending November 10, 2013 and December 15, 2012. The IDOL and IIC, through continuing a contradiction and refusal to acknowledge that corrected / updated earnings information was not made aware nor available to

Claimant until April 2013 (AR, P51; TH, Exhibit 3, P2 of 5)<sup>5</sup>, produced erroneous conclusions in this regard. Therefore, Claimant had no reasonable, mindful, nor constructive knowledge to report or convey this information to the IDOL on November 21<sup>st</sup> and December 28<sup>th</sup>.

*“In March 2013, Claimant came into the local office and left his business card because he wanted to participate in a job fair. (TH, Exhibit 3, P2 [note Initial Fact Finding, Date / Time Stamp, 2013-03-27 13:53]). When Department Workforce Consultant Senior Chris Orders checked to see if Claimant had been reporting self-employment<sup>6</sup>, she discovered the wages he reported in his weekly continued claim reports did not match the wages Sears reported it paid Claimant in its quarterly reports.”* (Brief of Respondent, P8, last paragraph; TH, Exhibit 3, P2)<sup>7</sup>.

Claimant was never considered self-employed by any entity; therefore, there was never a lawful requirement for reporting of self-employment when filing for unemployment benefits (TH, Exhibit 18, P1 of 1, paragraph B, i, ii, (1), and (a); AR, P52, quote from Stacy Harshman:

*“...This is volunteer work for him but he takes it very seriously...”*<sup>8</sup>.

*“The information Claimant provided also indicated that he worked full-time, more than 40 hours, for nine weeks during this period.”* (Brief of Respondent, P10, 2<sup>nd</sup> paragraph; TH, Exhibit

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<sup>5</sup> Initial Fact Finding, Date / Time Stamp 2013-04-01 14:08 (quote) “Will send notice to Claimant to provide check stubs.”

<sup>6</sup> Claimant and Ms. Orders had collaborated in the coordination of *free* job club meetings, with the Claimant strictly *volunteering* his time. The IDOL hosted the Magic Valley Employment Search Networking Group (MVESNG) at the Twin Falls, ID office of the IDOL. These MVESNG meetings were held with full knowledge and approval of Ms. Orders, as well as the MVESNG being represented at previous job fairs, with Claimant seeking advice and permission(s) through Ms. Orders and the IDOL.

<sup>7</sup> Initial Fact Finding, Date / Time Stamp 2013-03-27 13:53

<sup>8</sup> Protection of rights and benefits. “No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the commission, the director, any of its or his employees or representatives, or by any Court or any officer thereof, except that a Court may assess costs if the Court determines that the proceedings have been instituted or continued without reasonable ground. (I.C. § 72-1375(2))

11; TH, Exhibit 31; TH, Exhibit 34, P10-11; TR, P23, LI. 11-16; P24, LI. 21-25; P26, LI. 1-18; P35, LI. 5-10). Claimant references Sears' definition of "part-time" vs "full-time" employee in regards to the following quote. "*Claimant maintained he did not report he was working full time during these weeks because Sears did not consider him to be a full-time employee.*" (Brief of Respondent, P10, 2<sup>nd</sup> paragraph; TR, P10, LI. 19-25; P11, LI. 1-10; P25, LI. 9-25; P26, LI. 1-8). Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts a disputed definition of which Claimant had conscious knowledge of, and which was repetitively enforced, conveyed, and utilized by Sears' management, human resources, department and floor supervisors; yet, ultimately recognized in April 2013 (*after the acts of filing for unemployment benefits during the disputed timeframe*) by Claimant, as inconsistent with that of the IDOL. However, at the time of Claimant's filing for unemployment benefits, Sears' definition of "part-time" and "full-time" employee was strictly and precisely relied upon by the Claimant as a correct, binding, usable, valid and lawful definition when filing for unemployment benefits (TR, P10, LI. 24, 25; TR, P11, LI 1-10; AR, P16 #1; AR, P18, last paragraph).

Claimant made mention of and alluded to personal adversity(s) within appeal(s) to the IDOL, subsequently to the IIC, and currently to the Idaho Supreme Court. (TH, Exhibit 34, P2 of 33, paragraphs L. and M.; AR, P28, II., a., viii). Given the Claimant's "Extenuating Circumstances" (although genuinely not excuses), these seemingly extraordinary, real, substantial, compelling, and unrelenting events, do establish to the Court that Claimant was [and is] experiencing prolonged stress within his life). Considering these "Extenuating Circumstances", in conjunction

with a lack “constructive knowledge” regarding pursuing other possibilities in procuring additional earnings information, a reasonable mind would conclude Claimant simply made unknowing, inadvertent, and unintentional human errors.

Claimant’s reply to IDOL’s request is one (now) considered as reactive by the Claimant (TH, Exhibit 34, P32). To Claimant’s recollection, he has never intentionally exuded the indulgence of self-pity. However, experienced professionals discerning these types of issues are likely to perceive a genuine sense of frustration, duress, helplessness, hopelessness, and desperation within the recorded voice of the Claimant (Audio for Hearing dated July 9, 2013). Claimant contends, in consideration of Sears’ convincing, credible, compelling, and persuasive presentations, with frequent conveyance to employees regarding these specific definitions, in combination with his personal extenuating circumstances, it sensible and logical a reasonable mind would conclude Claimant simply made unknowing, inadvertent, and unintentional human errors. It simply did not enter Claimant’s consciousness to inquire otherwise.

### **ISSUES ON APPEAL**

- I. Is there substantial and competent evidence in the record to support the Industrial Commission’s findings and conclusions that Claimant willfully made false statements or willfully failed to report material facts in order to obtain unemployment benefits?
- II. Does IDOL and IIC’s failure to have Order signed by Thomas P. Baskin, Chairman, IIC invalidate / nullify said Order?
- III. Does merely citing, stating, commenting on, referencing and reiterating an overabundance (more than 39 citings) of Cases, Idaho Statutes and Authorities, Rules and Administrative Rules (Brief of Respondent, Pii through iii), categorically, unequivocally, and judiciously contribute to creating, establishing, or substantiating evidence?
- IV. Does IDOL and IIC’s failure to allow Claimant an opportunity to rectify discrepancies after receipt of corrected pay reporting(s) create a lawful foundation to overturn previous rulings?

- V. Do errors and inconsistencies within IDOL's Claimant Contact Record(s) create a lawful foundation for discounting validity of IDOL's Claimant Contact Record(s)?
- VI. Does the inability for discernment of Sears' earnings information by the IDOL create a foundation for establishing this information as inherently problematic?
- VII. With the insufficiency of IDOL and IIC's distinctly establishing Claimant's intention, "constructive knowledge", and lack of "mens rea" (guilty mind), or "*willful intent*", will the IDOL, IIC and Court remain unwavering in their opinion(s), definition, and rulings regarding "*willful intent*" (with reliance on and ascribed to by the IDOL and IIC; Meyer v. Skyline Mobile Homes, 99 Idaho, 754, 761, 589, P2d 89, 95 (1979); **or** will the IDOL, IIC and Court determine that Claimant's opinion(s), definitions, and understanding regarding "*willful intent*" (with reliance on and ascribed to by the Claimant; Smith v. State Department of Employment, 107 Idaho, 625, 628 691 P2d, 1240 (1984), the Idaho Supreme Court's definition of "willful" as cited herewith, comments by Supreme Court Justice Huntley in 1984), *is one* a reasonable mind would, with unwavering conviction and trust, consider in support of a final determination?
- VIII. Is there sufficient evidence to conclude that these proceedings have been instituted or continued without reasonable ground?

### **ARGUMENT**

- I. There remains no substantial and competent evidence in the record to support the Industrial Commission's findings and conclusions that Claimant willfully made false statements or willfully failed to report material facts in order to obtain unemployment benefits.

Claimant contends there remains no substantial and competent evidence presented by the IDOL or the IIC to conclude that Claimant would have reason or intent, as the IDOL and IIC have unreasonably determined, to set out with a conscious mind and "*willful intent*" (as defined and relied upon by the IDOL and IIC in the Meyer v. Skyline Mobile Homes, 99 Idaho, 754, 761, 589, P2d 89, 95 (1979) ruling), to unlawfully and unscrupulously obtain monies not rightfully owed to him. Any errors in this regard by the Claimant are, as concluded by the Claimant and presented to the Court, be construed, defined, interpreted, deduced, found, discovered, determined as, and considered strictly as inadvertent and accidental through the application, letter, and intent of associated labor laws in the State of Idaho. Claimant is guiltless

of the aforementioned and unsubstantiated claims. Claimant's assertions of guiltlessness are supported by his understanding, application, intention, definition and reliance upon *Smith v. State Department of Employment*, 107 Idaho 625, 628 691 P2d, 1240 (1984).

**II.** IDOL and IIC's Order is notarized but not signed by Thomas P. Baskin, Chairman, IIC. Claimant contests authority of Order on September 16, 2013 (AR, P26). The Order is notarized, but remains unsigned by Thomas P. Baskin, Chairman.

**III.** Merely citing, stating, commenting on, referencing and reiterating an overabundance (more than 39 citations) of Cases, Idaho Statutes and Authorities, Rules and Administrative Rules (Brief of Respondent, Pii through iii), categorically, unequivocally, and judiciously fail to contribute to creating, establishing, or substantiating evidence.

"Substantial evidence is more than scintilla of proof and less than preponderance." (Brief of Respondent, P12, paragraph 2; *Painter v. Potlach Corporation*, 138 Idaho, 302, 312, 63 P.2d 435, 438 (2003) citing *Zapata v. J.R. Simplot Co.*, 132 Idaho 513, 515, 975 P2d 1178, 1180 [1999]).

*Steen v. Denny's Restaurant*, 135 Idaho, 234, 237, 16 P.3d 910 (2000) "We will disturb the Commission's findings of fact only where they are not supported by substantial and competent, even if conflicting, evidence. See *Teevan v. Office of the Attorney General*, 130 Idaho 79, 82, 936 P.2d 1321, 1324 (1997). In *Idaho State Insurance Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985), this Court described the appropriate for substantial and competent evidence for the purpose of judicial review of an administrative agency's actions as follows:

The "substantial evidence rule" is said to be a "middle position" which precludes a *de novo* hearing but which does nonetheless requires a serious review which goes beyond the mere ascertainment of procedural regularity. Such a review requires more than a mere "scintilla" of



evidence in support of the agency's determination, through "something less than the weight of the evidence." "Put simply," . . . "the substantial [competent] evidence rule requires a court to determine 'whether [the agency's] findings of fact are reasonable.' " 110 Idaho at 260, 715 P.2d at 930 (citations omitted)"

Claimant contends merely citing, stating, commenting on, referencing and reiterating an overabundance (more than 39 citings) of Cases, Idaho Statutes and Authorities, Rules and Administrative Rules (Brief of Respondent, Pii through iii), categorically, unequivocally, and judiciously fail in contributing, creating, establishing, or substantiating evidence "Substantial evidence is more than scintilla of proof and less than a preponderance." (Brief of Respondent, P12, paragraph 2; Painter v. Potlach Corporation, 138 Idaho, 302, 312, 63 P.2d 435, 438 [2003] citing Zapata v. J.R. Simplot Co., 132 Idaho 513, 515, 975 P2d 1178, 1180 [1999]). "The Court does not reweigh the evidence or consider whether it would have reached a different conclusion." (Brief of Respondent, P12, paragraph 2; Ginther v. Boise Cascade Corporation, 150 Idaho 143, 244, P.3d 1229, 1233 [2010]). Claimant contends that the IDOL and IIC, in their endeavors of developing a preponderance of the evidence, merely developed and substantiated less than a scintilla.

**IV. IDOL and IIC failed to allow Claimant an opportunity to rectify discrepancies after receipt of corrected pay reporting(s).**

Although IDOL's pamphlet clearly states that Claimant "*...must contact his local office when he received correct earnings information.*" (TH, Exhibit 2B; TR, P12, LI. 8-9), Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents,

exhibits or transcripts, an opportunity extended by IDOL or IIC to Claimant, to rectify any potential discovered discrepancies, after receipt by the Claimant in April 2013, of the aforementioned corrected / updated earnings information, which remain incomplete.

V. Significant errors and inconsistencies within IDOL's Claimant Contact Record(s) would cause a reasonable mind to discount their validity, and thus conclusions based on these records.

Claimant contests validity of IDOL's statements by IDOL within their Customer Notes due to discovery of noteworthy inconsistencies and errors. It is erroneously asserted within the Customer Notes by the IDOL that Claimant did not comply to IDOL's request for paystubs in a timely manner; however, Claimant DID respond, specifically to IDOL's request for Claimant to obtain paystubs from Sears, providing those paystubs to the IDOL in a timely manner (TH, Exhibit 14, P1, entry dated 4/3/2013): The following are quoted entries within the Customer Notes by the IDOL, leading to Claimant's lawful contention that proceedings were instituted without reasonable ground<sup>9</sup>:

*"The claimant has been requested to bring in check stubs. Please make copies and put on Chris' desk. ChrisO3722."* (TH, Exhibit 14, P1; entry date 4/1/2013 by corders).

*"Copies received and distributed per previous instruction."* (TH, Exhibit 14, P1; entry date 4/3/2013 by lalmanza).

*"pc from clmt asking Y he was denied (161) when he did turn in requested info? Contacted ADJ (Elaine) n she agreed to talk with CLMT."* (TH, Exhibit 14, P1; entry date 4/12/2013 by jrobles). Claimant is unable to locate, cite, or discover, in any associated Court records, determinations, documents, exhibits or transcripts where ADJ (Elaine) spoke with (either by telephone, or forms of written communication), at any time with Claimant between 4/12/2013 and 4/23/2013).

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<sup>9</sup> Protection of rights and benefits. "No individual claiming benefits shall be charged fees or costs of any kind in any proceeding under this chapter by the commission, the director, any of its or his employees or representatives, or by any Court or any officer thereof, except that a Court may assess costs if the Court determines that the proceedings have been instituted or continued without reasonable ground. (I.C. § 72-1375(2))

*“PC from clmt at local office (Magic Valley) indicates was received notice he had failed to provide info. Clmt states he did provide requested check stubs on 2 occasions...”* (TH, Exhibit 14, P1; entry date 4/23/2013 by eguillen).

VI. The inability for discernment of Sears’ hours and wages earnings information by the IDOL creates a foundation for establishing this information as inherently problematic.

If the IDOL is unable to accurately and correctly utilize hours and wages earnings information supplied by Sears, *a reasonable mind would not conclude*, with an expectation and requirement, the Claimant discern and correctly report hours and wages before taxes when presented the same information.

VII. With the insufficiency of IDOL and IIC’s distinctly establishing Claimant’s intention, “constructive knowledge”, lack of “*mens rea*” (guilty mind), or “*willful intent*”:

1. Will the IDOL, IIC and Court remain unwavering in their opinion(s), definition, and rulings regarding “*willful intent*” (with reliance on and ascribed to by the IDOL and IIC; Meyer v. Skyline Mobile Homes, 99 Idaho, 754, 761, 589, P2d 89, 95 [1979])?

or

2. Will the Court determine that Claimant’s opinion(s), definitions, and understanding regarding “*willful intent*” (with reliance on and ascribed to by the Claimant, Smith v. State Department of Employment, 107 Idaho, 625, 628 691 P2d, 1240 [1984], the Idaho Supreme Court’s definition of “*willful*” as cited herewith, comments by Supreme Court Justice Huntley in 1984), *is one* a reasonable mind would, with unwavering conviction and trust, ascribes to in support of a final determination.

VIII. Yes, there sufficient evidence to conclude that these proceedings have been instituted or continued without reasonable ground.

Claimant contends there is sufficient evidence where a reasonable mind would conclude that these proceedings have been instituted or continued without reasonable ground. A reasonable mind would consider, deduce, and conclude that based on previous interactions with Claimant, Ms. Orders fully understood Claimant's status within the Magic Valley Employment Search Networking Group as strictly voluntary. Therefore, there was no reasonable ground for Ms. Orders to institute or continue and further pursue the issue of his employment status.

### **CONCLUSION**

Charles Christian Bell (Claimant) successfully and irrefutably established his original assertions, findings and determinations, proposing to the Court, there are only two certainties concluded at the end of this legal procedure: (1) "*Charles C. Bell (Claimant) was a seasoned filer and no stranger to the unemployment claim filing process when he filed his ninth claim for benefits.*" (Exhibit 8, P1). And, (2) during the process, the IDOL, the IIC, and the Claimant are to blame only of inadvertent, accidental and unintentional human error(s). These are and remain the only substantiated and unrefuted fact(s) presented within this case. Neither of these unrefuted facts influence nor lend themselves to "*willful intent*" as ascribed to and concluded by the IDOL and IIC.

From the perspective of the Claimant, within the discernment of the legal system, individuals intentionally engaging in actions deemed dishonest and subject to legal action through application, letter and intent of state statutes, codes and laws, are properly blameworthy;

conversely, individuals unintentionally engaging in actions deemed dishonest and subject to legal action through application, letter and intent of state statutes, codes and laws, are properly, reasonably and justly innocent of legal repercussions, blameworthiness, fines, and liabilities. Claimant reiterates and asserts, that perhaps his errors, like those of the IDOL, are purely human error; and, there remains nothing to substantiate anything other than this conclusion. All other claims by IDOL and IIC are and remain unfounded, false, conjecture, and speculative, resulting in erroneous, incorrect, and unjust conclusions.

Claimant, with conclusively more than a scintilla, and slightly less than a preponderance of the evidence, successfully presented, through documents, records, exhibits, citing(s), cases, and Idaho state statutes associated with this case, why the findings and conclusions by the IDOL and IIC against the Claimant are erroneous. Therefore, the Claimant considers any and all rulings by the IDOL and IIC, requiring repayment and penalty, and related to date to this issue, as unjust, contrary to equity, incompatible to good conscience, and conflicting with the letter and the intent of the associated rules, statutes, and laws.

Claimant presented to the Court, through appropriate citing(s), examples, and significant substantiated and irrefutable fact(s) supporting Claimant's contentions and conclusions, he did not willfully misrepresent or falsify any documents to obtain unemployment benefits. Claimant repeatedly offered legitimate and reasonable verification of Claimant inadvertently and accidentally submitting discrepancies in claims for unemployment benefits.

Claimant did not, as ascribed to by the IDOL and IIC, willfully, willingly, knowingly, nor with "*constructive knowledge*", dishonest intent or design, "*mens rea*"...a guilty mind, nor with

*“willful intent”* (as ascribed to by the IDOL and IIC), knowingly fail to report a material fact.

Claimant contends given the aforementioned facts, a reasonable mind would conclude Claimant simply made unknowing, inadvertent, and unintentional human errors. Reiterating: Claimant understands the laws associated in this case are intended to disqualify those claimants who purposely, intentionally, or, consciously, not those whose omission is accidental because of negligence, misunderstanding or other cause.

Thus, it is sensible and prudent regarding final rulings in this legal matter, and where a reasonable mind would, when considering the interest, intent, letter and application of the associated laws, conclude Claimant, within the framework of filing for unemployment benefits in the State of Idaho, simply made unknowing, inadvertent, and unintentional human errors. Therefore, Claimant respectfully requests and submits to compel the Court, that all associated erroneous rulings be overturned.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 27<sup>th</sup> day of June, 2014, a true and correct copy of the APPELLANT REPLY BRIEF was served by regular United States mail upon each of the following:

Mr. Thomas P. Baskin  
Chairman  
Idaho Industrial Commission  
PO Box 83720  
Boise, ID 83720-0041

Tracey K. Rolfsen  
Deputy Attorney General  
Idaho Department of Labor  
317 W Main Street  
Boise, ID 83735

Clerk of the Court  
Supreme Court – Judicial Branch  
PO Box 83720  
Boise, ID 83720-0101

ccb

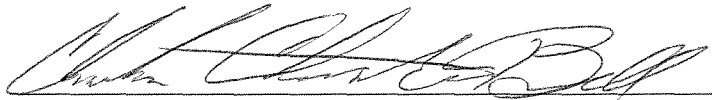
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**APPELLANT SIGNATURE PAGE**

State of Idaho )  
 ) ss.  
County of Twin Falls )

Charles Christian Bell, being sworn, deposes and says:

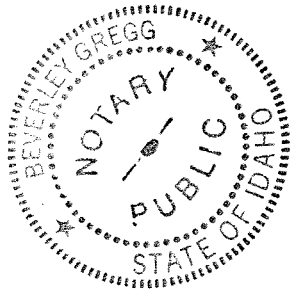
That the party is the Claimant in the above-entitled Appellant Reply Brief, and that all statements in this Appellate Brief are true and correct to the best of his knowledge and belief.



Charles Christian Bell, *ProSe*  
(signature of claimant / appellant)

Subscribed and Sworn to before me this 4<sup>th</sup> day of June, 20 14.

(SEAL)



Title Notary  
Notary Expires 4-13-17