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Wittkopf v. Bon Appetit Management Co. Respondent's Brief Dckt. 44909

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IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM M. WITTKOPF,

Claimant/Appellant,

vs.

BON APPETIT MANAGEMENT CO.,

Employer/Respondent,

and

IDAHO DEPARTMENT OF LABOR,

Respondent.

SUPREME COURT NO. 44909

BRIEF OF RESPONDENT
IDAHO DEPARTMENT OF LABOR

ON APPEAL FROM THE INDUSTRIAL COMMISSION
STATE OF IDAHO
THOMAS E. LIMBAUGH, CHAIRMAN

IDAHO DEPARTMENT OF LABOR,
RESPONDENT

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STATEMENT OF THE CASE

A. Nature of the Case

Claimant/Appellant William M. Wittkopf (“Wittkopf”) appeals from the Decision and Order of the Idaho Industrial Commission (“Commission”), which found that his appeal of an unemployment benefits determination was untimely.

B. Course of the Proceedings

On July 11, 2013, the Idaho Department of Labor (“IDOL” or “Department”) mailed an eligibility determination to Wittkopf finding him ineligible for unemployment benefits based on his willful misrepresentations. Exhibit, p. 15. In that determination, Wittkopf was notified of the fourteen (14) day period for filing an appeal and that his last day for filing an appeal was July 25, 2013. R., p.7.

On September 27, 2016, more than three years after the deadline for filing an appeal, Wittkopf mailed a letter of appeal to the Department. Exhibit, pp.9-11.

A telephonic hearing was held on October 18, 2016 to determine whether Wittkopf’s appeal was timely. Notice of Telephone Hearing, p.1.

On October 20, 2016, the Appeals Examiner issued a written decision finding that he lacked jurisdiction to hear Wittkopf’s appeal because it was untimely. R., pp. 1-6.

Wittkopf appealed to Commission. R., pp. 7-9.

On January 27, 2017, after a *de novo* review, the Commission came to the same conclusion as the Appeals Examiner and issued a Decision and Order that found Wittkopf's appeal was untimely. R., pp.14-18.

On March 8, 2017, Wittkopf appealed to this Court. R., p.19.

C. Statement of the Facts

The genesis of this appeal is an eligibility determination dated July 11, 2013. Exhibit, pp.6-8. The determination found that Wittkopf had willfully misrepresented material facts and, accordingly, Wittkopf was assessed overpayments, penalties, and interest. *Id.*

The eligibility determination informed Wittkopf of his right to appeal, and of the deadline for exercising that right:

7/11/2013
Date Of Mailing

7/25/2013
Last Day To Protest

PROTEST RIGHTS

If you disagree with this determination, you have FOURTEEN (14) DAYS from the date of mailing to file a protest. A protest must be in writing and signed by an interested party. The protest can be submitted by faxing to (208) 334-6440 or mailed to the Idaho Department of Labor Attention Appeals Bureau, 317 W Main St. Boise ID 83735-0720. If the protest is mailed, it must be postmarked no later than the last day to protest. If the protest is faxed, it must be received by the Appeals Bureau by 5:00 pm (as of the time zone receiving the appeal) no later than the last day to protest. Email protests will not be accepted. **If no protest is filed, this determination will become final and cannot be changed.** If you have any questions about this determination or filing a protest, please contact the Department at the number listed above.

Exhibit, p.7 (emphasis in original).

An appeal was not filed on or before July 25, 2013, the last day to do so.

On September 27, 2016, more than three years after the appeal deadline had passed, Wittkopf mailed to the Department a written notice of appeal. Exhibit, pp.9-11.

A hearing was scheduled on Wittkopf's appeal for October 18, 2016 to determine if his appeal was timely. Notice of Telephone Hearing, p.1. The notice of hearing informed Wittkopf that the issue to be heard on appeal was "whether a timely request for an appeal hearing was filed, according to § 72-1368(3) and (5) of the Idaho Employment Security Law." *Id.*, p.2.

At the hearing, the Appeals Examiner asked Wittkopf why his appeal was filed so late:

And the issue is that on July 11th of 2013, the Department sent a decision to you. That decision is in the record. It was a willfully made false statement or failed to report decision. The last day to protest that was July 25, 2013. The protest that my Department received is dated September 27th, 2016. So, nearly three years later. If this back in 2013 was not a valid decision – why did it take you three years to protest it?

Tr., p.9, ll.14-22.

Wittkopf's reply was that, at the time of the 2013 eligibility determination, his "life was turned upside down" and he "[didn't] even recall getting any of that stuff back in 2013." Tr., p.9. l.23 – p.10, l.5.

Wittkopf challenged the 2013 willful misrepresentation finding. He testified:

And how did [the Department] determine it was fraud? I mean I screwed up on a few weeks out of a whole summer and I had to pay

back 5,000 dollars out of a whole few hundred dollars' worth of mistakes. That's the part I don't understand, how they even determine fraud. I have never been fraudulent.

Tr., p.11, ll.15-20.

Wittkopf also complained that because he received a discharge in bankruptcy court after the 2013 determination, he should have been able to collect unemployment benefits in later years notwithstanding the 2013 determination. A representative of the Department explained that because of the 2013 determination, and the fact that the amount owed to the Department pursuant to that determination had never been repaid, by operation of Idaho Code § 72-1366(12)¹ Wittkopf was precluded from receiving unemployment benefits notwithstanding any bankruptcy discharge. Tr., p.10, l.24 – p.11, l.12.

Wittkopf's appeal was rejected by an Appeals Examiner with the Department and, subsequently, by the Commission. R., pp. 7-9, 14-18. Both found that Wittkopf's appeal was untimely.

The Commission, relying upon this Court's holdings in Striebeck v. Employment Security Agency, 83 Idaho 531, 366 P.2d 589 (1961), and Fouste v.

¹ I.C. § 72-1366(12) reads: "A claimant shall not be entitled to benefits for a period of fifty-two (52) weeks if it is determined that he has willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. The period of disqualification shall commence the week the determination is issued. The claimant shall also be ineligible for waiting week credit and shall repay any sums received for any week for which the claimant received waiting week credit or benefits as a result of having willfully made a false statement or willfully failed to report a material fact. The claimant shall also be ineligible for waiting week credit or benefits for any week in which he owes the department an overpayment, civil penalty, or interest resulting from a determination that he willfully made a false statement or willfully failed to report a material fact." (Emphasis added.)

Department of Employment, 97 Idaho 162, 168, 540 P.2d 1341, 1347 (1975), which are discussed *infra*, found that Wittkopf's appeal from the 2013 determination was filed beyond the fourteen (14) day period for filing such an appeal and, therefore, was untimely. R., p.16. The Commission found it lacked jurisdiction to review any matters beyond the timeliness issue:

The Commission's jurisdiction in this matter is limited to the timeliness of Claimant's protest of the Eligibility Determination the Department issued on July 11, 2013. Whether or not Claimant's bankruptcy discharged the overpayment arising out of that Eligibility Determination is outside the Commission's jurisdiction. Claimant would have to seek a ruling on that matter from the U.S. Bankruptcy Court that presided over his bankruptcy proceeding.

R., p.17. The Commission concluded that "[t]he Eligibility Determination issued on July 11, 2013 is now final and cannot be disturbed." *Id.*

Wittkopf appealed to this Court.

ISSUE ON APPEAL

Does substantial and competent evidence support the Commission's finding that Wittkopf failed to timely appeal from the Department's 2013 eligibility determination?

ARGUMENT

I.

Substantial and Competent Evidence Supports the Commission's Finding that Wittkopf Failed to Timely Appeal From the Department's 2013 Eligibility Determination

A. Standard of Review

In appeals from the Commission, the Idaho Supreme Court's jurisdiction is limited “to questions of law.” Idaho Const., Art. V, § 9.

This Court has observed that is “constitutionally compelled to defer to the Commission's findings of fact where supported by substantial and competent evidence.” Locker v. How Soel, Inc., 151 Idaho 696, 699, 263 P.3d 750, 753 (2011), *quoting* Teffer v. Twin Falls School Dist. No. 411, 102 Idaho 439, 439, 631 P.2d 610, 610 (1981).

Commission findings must be upheld if based on “substantial competent evidence,” which is relevant evidence that a reasonable mind might accept to support a conclusion. Bringman v. New Albertsons, Inc., 157 Idaho 71, 74, 334 P.3d 262, 265 (2014); Bell v. Idaho Dept. of Labor, 157 Idaho 744, 747, 339 P.3d 1148, 1150 (2014).

This Court “will not re-weigh the evidence or consider whether it would have reached a different conclusion from the evidence presented.” Bringman, supra; Bell, supra. In addition, all facts and inferences are viewed in the light most favorable to the facts found by the Commission, and its determinations as to credibility of witnesses and weight of evidence will be upheld unless clearly

erroneous. Bringman, *supra*; Bell, 157 Idaho at 746-747, 339 P.3d at 1150-1151.

Finally, pure questions of law presented on appeal are freely reviewed. McNulty v. Sinclair Oil Corporation, 152 Idaho 582, 585, 272 P.3d 554, 557 (2012).

B. Appeals Filed More Than Fourteen (14) Days After Issuance of an Eligibility Determination Are Time-Barred

Under the Employment Security Law, I.C. §§ 72-1301 *et seq.*, a claimant has only fourteen (14) days in which to file an appeal from a determination of eligibility made by the Department. I.C. § 72-1368(3)(c) (determinations “shall become final unless, within fourteen (14) days after notice, . . . an appeal is filed by an interested party”). If an appeal “[is] not filed within the applicable time limit, it shall be dismissed on such grounds.” IDAPA 09.01.06.090.

More than half a century ago, this Court held that the statutory requirements governing the right of appeal under the Employment Security Law are mandatory and jurisdictional. Striebeck v. Employment Security Agency, 83 Idaho 531, 366 P.2d 589 (1961). The holding in Striebeck was re-affirmed in Fouste v. Department of Employment, 97 Idaho 162, 168, 540 P.2d 1341, 1347 (1975), and numerous other opinions. *See, e.g.*, Kennedy v. Hagadone Hospitality Co., 159 Idaho 157, 160, 357 P.3d 1265, 1268 (2015); Smith v. Idaho Dep’t of Labor, 148 Idaho 72, 74, 218 P.3d 1133, 1135 (2009); Moore v. Melaleuca, Inc., 137 Idaho 23, 26, 43 P.3d 782, 785 (2002); Welch v. Del Monte Corp., 128 Idaho 513, 515, 915 P.2d 1371, 1373 (1996).

These cases, and the text of I.C. § 72-1368(3)(c), make clear that appeals

filed outside the fourteen (14) day window for challenging an IDOL determination are time-barred. Compliance with this statutory filing requirement is mandatory and jurisdictional.

Wittkopf, similar to the claimant in Fouste, “failed to properly utilize the clearly established procedures for appealing a determination of ineligibility.” 97 Idaho at 167, 540 P.2d at 1346. The Fouste Court explained that “[t]he 14-day limitation strikes a necessary balance between a claimant’s right to appeal and the Department’s need to handle its affairs in an expeditious and efficient manner.” 97 Idaho at 167-168, 540 P.2d at 1346-1347.

C. Substantial and Competent Evidence Supports the Finding of the Commission That Wittkopf’s Appeal Is Time-Barred

The Commission’s finding that Wittkopf’s appeal from the 2013 eligibility determination was untimely is supported by substantial and competent evidence and should be upheld.

It is uncontroverted that Wittkopf’s appeal was filed more than three years after the Department’s determination of willful misrepresentation. Wittkopf presented no evidence suggesting a defect in the service of that determination. He argued only that, at the time, his “life was turned upside down” and he “[didn’t] even recall getting any of that stuff back in 2013.” Tr., p.9. l.23 – p.10, l.5.

This is not a legally sufficient basis for ignoring a mandatory and jurisdictional time period for filing an appeal. The Commission’s finding that

Wittkopf's appeal was untimely is in accord with applicable law and should be upheld.

CONCLUSION

Substantial and competent evidence supports the Commission's finding that Wittkopf failed to timely appeal from the Department's 2013 eligibility determination. The Commission's decision should be affirmed.

Respectfully submitted,



DOUG WERTH
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Idaho Department of Labor

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 25th day of October, 2017, 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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