

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

FILED
CLERK OF COURTS

2012 MAR 22 PM 3:25

WASHINGTON CO. OHIO

IN RE CLAIM OF: :

BRONSON L. BACH, :

Appellant. :

Case No.: 11 AA 320

vs. :

JUDGE: BOYER

MICKEY FORD, ET AL., :

ENTRY

Appellees. :

.. .. . :

This matter came before the Court upon the appeal of Appellant Bronson L. Bach. Mr. Bach was represented in these proceedings by Attorney Dennis Sipe and the Director of the Ohio Department of Jobs and Family Services was represented by Patria Hoskins.

The Court having received the record together with briefs from both Appellant and Appellee was fully advised concerning the matter.

The Court finds that the Appellants appeal should be granted for the reason set forward in the Court's opinion filed on March 15, 2012.

WHEREFORE, it is the Order of the Court that this matter be remanded to the Bureau for further evidentiary hearing.

APPROVED:

ENTER:

As of the date
Of filing hereof

Dennis L. Sipe, #0006199
BUELL & SIRE CO., L.P.A.
322 Third Street
Marietta, OH 45750
Attorney for Appellant

Hon. Susan E. Boyer
Judge

MAR 22 2012

Patria Hoskins
Attorney for Appellees

NOTICE TO CLERK'S OFFICE:
FINAL APPEALABLE ORDER

Telephone 3-21-12

JM 785

**IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY OHIO**

FILED
CLERK OF COURT
2012 MAR 15 PM 1:06
WASHINGTON CO. OHIO

IN RE CLAIM OF:

CASE NO. 11 AA 320

**BRONSON L. BACH,
Appellant,**

JUDGE SUSAN E. BOYER

OPINION ON ADMINISTRATIVE APPEAL

vs.

**MICKEY FORD, et al.
Appellees.**

This cause comes on for consideration of an Administrative Appeal filed from a denial of Unemployment Compensation Benefits for the Appellant, Mr. Bach.

Mr. Bach lost his employment from Hyde Park Restaurant. on January 5, 2009, HE applied for Unemployment Compensation Benefits. The application was initially denied, then that decision was reversed and benefits were approved February 24, 2009, in the amount of \$372.00 per week. Supplemental benefits of \$327.00 per week were approved in July of 2009 and additional supplemental benefits, in like amount, were approved in January 2010. In January of 2011 the Bureau notified the Recipient that he had received benefits for which he was not eligible as a result of incorrectly reporting wages from Flavor Acquisition Corporation during the period of his receipt of unemployment benefits. The recipient appealed and the redetermination was affirmed January 31, 2011. Further appeal followed and an evidentiary phone hearing was held June 14, 2011. The hearing officer affirmed the redetermination June 17, 2011. Request for further review was denied and a timely appeal to this Court was filed August 18, 2011. The record and briefs have been timely filed.

At the hearing the only one who testified was the Appellant. The Appellees presented no evidence, documentary or oral. The Appellant testified that he had not deliberately misstated any income; that his check was for a different period than the Unemployment Board

required for reporting income, which made reporting difficult; that his checks, in addition to wages, included reimbursement of expenses and mileage at .51 per mile; and that he had received conflicting information from the Bureau as to how to address his difficulties with reporting his income.

The opinion issued discounts the Appellant's version of how he calculated his reported income, noting that his employer reimbursed expenses and milage.

The appeal raises two issues. First, that the process used by the Review Commission violated due process; and second, that it's decision was against the manifest weight of the evidence.

The specific due process issues raised were:

1. Lack of notice of the charges against him.
2. Lack of an opportunity to cross examine witnesses against him.

The notices that were given to the Appellant indicating that the Appellant had filed fraudulent claims contained in the record. There are three separate notices, each covering a different period. The first covers the benefit year 1/04/2009 to 01/02/2010, and alleges an overpayment of \$1,339.00. The second covers the benefit period 1/03/2010 to 1/01/2011. This notice alleges an overpayment of \$1,144.00. The third covers an additional portion of benefit year 01/04/2009 to 01/02/2010, and alleges an additional overpayment in that benefit year of \$769.00. All of the notices are dated January 31, 2011.

The three notices sent to the Appellant each say that he:

incorrectly reported earnings with FLAVOR ACQUISITION CORPORATION. The claimant withheld this information with the intent of obtaining benefits to which he/she was not entitled. The weeks at issue are disallowed. The Claimant is not eligible to receive benefits for the weeks referenced below. The information below identifies the ending dates of the weeks overpaid, the amount overpaid for each week, and/or the total amount overpaid. The claimant has been overpaid benefits to which he/she was not entitled for reasons determined to be "Fraud" (CANCELLED) in the amount of [differs in each notice as set forth above]. Additionally, it is ordered that if the claimant files valid weekly claims during the period 01/30/2011 through 01/31/2017, he/she shall be ineligible for [72, 12, 4] valid weekly claims filed during such period. The information

below identifies the ending dates of the week(s) overpaid, the amount overpaid for each week, and the total amount overpaid.” There followed five columns with the following headings: Week Ending Date; Amount of Earnings; Deductible Amount; Comments; Amount Overpaid.

The week ending dates are set forth; the amount of earnings - which corresponds to a listing from the employer as to amount - are set forth; the deductible amount, which is listed for each week as “0”; the comment for each week is “cancelled”; and the amount overpaid is set forth. The overpaid amount is apparently the full amount of the unemployment compensation paid to the Applicant, although there was no evidence on that point.

Nowhere is there any evidence of the amount of earnings the Applicant reported for the periods in question. Included in the Director’s file, but not included in the notice to the Applicant, is a calculation by the employer of the employee’s income. It is not clear if this information was provided to the Applicant for purposes of this hearing. It should be noted that this is not the same as the amount paid in the employee’s paychecks. His paychecks were for two weeks and went from Saturday to the second following Saturday. The Bureau required reporting of income for Sunday to Saturday. There is no breakdown of expenses, commissions, mileage, and expense reimbursement from the employer.

One of the exhibits, “Exhibit B”, provided by the Applicant for the hearing, is referred to by the hearing officer and a Mr. Latakas from Job and Family Services. “Exhibit B” is not part of the record. It is supposed to contain copies of each of the Applicant’s pay stubs or earnings statements.

Attached to a notice of appeal from the decision after the oral hearing, are copies of three earning statements. These documents, however, are not part of the hearing transcript. The Court cannot determine whether they were used by the hearing officer to make his determination on the appeal.

The position of the Applicant was that he had significant difficulty reporting his income on-line to the Unemployment Bureau; that because of the difference in pay periods, he

estimated his income (he was reporting income before he actually received checks; that after repeated contacts with the State, in which he sought advice on how to report his income, account for expenses and mileage, and after receiving different advice from various people on the phone, he did the best he could; and that he was not told to return to the site and amend figures if his paychecks differed from his estimate; and that he had no intent to defraud the State.

There is no evidence as to what amounts were reported. There is no way for this Court to determine whether or not they tie into any of the explanations by the Applicant. There was no way for the Applicant to explain or detail his reporting without this information. (The Court does note that the forms attached to the last Administrative Appeal show that, contrary to the findings of the hearing officer, mileage was not reimbursed - at least not in full. The first 50 miles were not reimbursed, although mileage in excess of that figure was reimbursed at \$.51 per mile. The Appellant had no fixed place of business. Mileage going to and from his changing employment sites would normally be deductible from income. The Applicant worked one, two, or sometimes three days per week on a Friday, Saturday, and Sunday, which could result in an expense not reimbursed by the Applicant's employer of roughly \$25.00, \$50.00, or \$75.00 per week.) There is no record from which the Court can make an accurate determination as to how the Bureau made its initial or final determination. That is largely because there was no factual presentation as to how the alleged fraud occurred. There is no evidence that the employee was permitted to cross-examine, question, or go through, so as to demonstrate an error in the initial determination by the Bureau. This is a denial of due process.

The Court needs to be clear - the Court is not finding that the determination of the Bureau was incorrect in result. It may be that, upon further hearing, the evidence once presented will substantiate that the Appellant, in fact, committed fraud, and that his benefits should be cancelled, repaid with interest, and that further eligibility for unemployment should be

curtailed. There is, however, a due process right for the Applicant that has been ignored. The overall system cannot function without a full presentation of evidence. The results are open to question. Adequate review becomes difficult, if not impossible, and confidence in the system is diminished on all fronts.

The Court orders the matter remanded to the Bureau for further evidentiary hearing. Attorney Sipe shall journalize.

Judge Susan E. Boyer

c. Atty. D. Sipe
Atty. P. Hopkins ✓