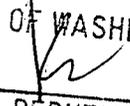


FILED
COURT OF APPEALS
DIVISION II

2012 AUG 29 PM 1:25

STATE OF WASHINGTON

BY  DEPUTY

NO. 43230-7-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

v.

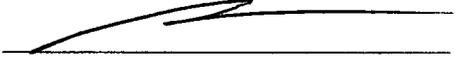
DAN ISBELL

Appellant.

ON APPEAL FROM THE
SUPERIOR COURT OF MASON COUNTY

Before
The Honorable Toni A. Sheldon, Judge

OPENING BRIEF OF APPELLANT


DAN ISBELL, Appellant, Pro Se

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A. ASSIGNMENT OF ERROR

1. There was insufficient evidence provided by the Department of Employment Security in their decision that there was an overpayment of unemployment benefits in a timely manner.

2. It was constitutional error for the Department of Employment Security to not provide the reason of the overpayment and how the error was made by the appellant.

3. It was constitutional error for the trial court to accept the decision of the Administrative Court and the Department of Security without the Administrative Court providing due process to appellant.

B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Did the Department of Employment Security withhold the error made by the appellant at the first hearing of appeal and subsequent hearing on appeal made to the Department of Employment Security by the appellant by allowing the error to continue after the first hearing of appeal into another year without informing the appellant of the wrong doing?

Assignment of Error No.1

2. Did the Department of Employment Security set for the reason for the overpayment of unemployment benefits prior to making their decision? Assignment of Error No. 2

3. Did the Administrative Law Judge provide sufficient evidence of the reason for the overpayment at the hearing of appeal and any errors made by appellant? Assignment of Error No. 2.

4. Was it constitutional error for the trial court to accept the decision of overpayment from the Administrative Court and the Department of Security without the Administrative Court and the Department providing due process to appellant of the initial error? Assignment of Error No. 3

C. STATEMENT OF THE CASE

Appellant would like to begin by explaining to the Court how this problem started. In January 2010, I received a notice from the Department of Employment Security stating that I was overpaid for one (1) week in January 2010. RP at 3, line 24. I was confused as to how the overpayment happened. RP at 3, line 8-9. The notice I received from the Department of Employment Security said nothing about what happened to cause the overpayment. RP at 6, line 2-4. It only said I was overpaid \$185.00 for the one week. RP at 3, line 21. The notice went on to say that if I did not agree with this decision that I could appeal the decision to the Department. RP at 1, lines 8-9. Since the notice did not explain anything about how the overpayment happened, RP at 6, line 3. I appealed the Department's decision. I assumed that the appeal process would reveal how the overpayment occurred, if there was an overpayment made. I had

no evidence showing that I was overpaid. RP at 6, lines 10-11. The other thing I did not understand was that the Department said I was overpaid only for that one week when I had been filing my unemployment claim the same way for several weeks prior, but only overpaid for that one week in question. RP at 4, lines 20-21 and RP at 7, line 21.

Pursuant to RCW 50.20.190(1) requires that the Department of Employment Security shall issue an overpayment assessment setting forth the reasons for the amount of over payment. The reason for the overpayment was not provided to the Administrative Court by the Department of Employment Security for the appeal. RP at 6, line 19, RP at 7, line 1 and RP at 10, lines 11-14.

I appealed the decision to receive answers. A telephone appeal was scheduled for March of 2010. RP at 1, lines 5-6. During that appeal, as evidenced by the transcript, I asked the Administrative Law Judge several times how I was overpaid. RP at 4, lines 14-15, 17-18, and 20-24. She did not know. RP at 6, line 19, RP at 7, line 1. The Department only furnished to the court a statement saying I was overpaid \$185.00 for that week. RP at 4, line 13 and RP at 5, line 12. The Department presented no evidence at the appeal of an overpayment. RP at 6, line 19 and RP at 7, line 1. They never stated that I was filing incorrectly and what I needed to do to correct how I was filing. They had this information at their fingertips, but did not present it to the court.

Regarding RCW 50.20.190(2) the Administrative Law Judge stated that there was no issue of fraud or misleading at all in the file. RP, at 5, lines 3 & 4 and RP at 10, lines 20-22.

When I asked the Administrative Law Judge how the overpayment occurred she said “For whatever reason”. RP at 5, lines 23-24 and RP at 7, lines 1-2. She sided with the Department of Employment Security based on them saying they overpaid me without any evidence. RP at 6, lines 2-5, and line 19 and RP at 7, line 1. Apparently I was filing my hours incorrectly but I was not notified by the Department until one year later on or about March of 2011. I received a telephone call from a man named Chris. He stated that he was an investigator for the Department. He said I had been filling out my unemployment claim wrong for the past year or so. Chris told me what I was doing wrong and told me how to correct my claim with unemployment. I immediately did what Chris told me to do. The problem here is that this information should have been provided to me at the March 2010 appeal hearing, not one year later. RP at 6, line 3. This could have all been resolved at the first appeal hearing with the Department if they would have properly looked at the reason of how I was filing incorrectly and informing me. RP at 6, line 19 and RP at 7, line 1.

Now the Department states that I owe them approximately \$16,000.00 plus penalties and interest.

We are a nation of laws. Citizens of this country expect to be treated fairly in court. One component of being treated fairly is to be able to review the evidence brought against you and answer it. I was not given this opportunity. No “how and why” were ever presented at the first appeal yet I was ruled against. I was denied due process.

Unfortunately, I do not have money to hire an attorney. I have very little income coming in and unable to sufficiently have myself represented properly. I am at the mercy of the court for it to understand that the Department of Employment of Security and the Administrative Law Judge denied me the right to the reason of what I did wrong. RP at 10, lines 11-15. I am a lay person that does not know how to apply case law. I asking that the court does not hold that against me.

D. ARGUMENT

1. THE STATE PRESENTED INSUFFICIENT EVIDENCE TO SUPPORT THEIR DECISION OF THE REASON OF OVERPAYMENT AND HOW APPELLANT ERROR

Appellant’s right to due process under Washington Constitution Article 1 and United States Constitution, Fourteenth Amendment, Section 1 was violated where the State of Washington, Department of Employment Security failed to provide a reason of wrong doing in the filing of unemployment benefits.

As part of the due process rights guaranteed under both the Washington Constitution, Article 1 and the U.S. Constitution Fourteenth

Amendment the state must prove every element beyond a reasonable doubt of the wrong doing by the appellant. The State failed to prove a reason of improper filing of benefits therefore denying the appellant his due process.

Appellant would have had the ability to right the incorrect filing of unemployment benefits if he had been properly advised of his error in filing said benefits. The State denied any reason of error or the remedy to correct his mistake.

The Administrative Law Judge did not find that the error was the cause of fraud, misrepresentation, or willful nondisclosure, she just failed to inform appellant of what he was doing wrong. The Department of Employment Security also failed to disclose what the appellant did wrong, they just said you were overpaid and this went on for a year before coming forth with a reason, which continued to cause the overpayment. It is the Department's duty to be diligent to providing information of wrong filing. Because the Department failed to notify appellant of the reason it has created a hardship to the appellant. With all the penalties, late charges and interest being assessed against appellant, it has put him in financial ruins.

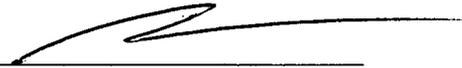
E. CONCLUSION

For the foregoing reasons, the Appellant respectfully requests that this Court vacate the rulings of the Administrative Law Judge and the

Judge of the Superior Court in Mason County, and dismiss the same with prejudice or in the alternative, that this matter be remanded for new trial.

DATED: August 27, 2012.

Respectfully submitted,



DAN ISBELL
Appellant, Pro Se

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WASHINGTON STATE COURT OF APPEALS
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DAN ISBELL,

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STATE OF WASHINGTON
DEPARTMENT OF EMPLOYMENT
SECURITY,

Respondent(s).

NO. 43230-7-II

DECLARATION OF
MAILING

On August 27, 2012, I mailed a true and correct copy of the **Appellant's Opening Brief** to Dionne M. Padilla-Huddleston, Office of the Attorney General, P.O. Box 40110, Olympia, WA 98504-0110, by placing a correctly addressed envelope with the documents enclosed with postage prepaid in the United States mail.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 27th day of August, 2012, signed at Belfair, Washington.


DENISE ROLLINS