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(8/19/97)

Appeal Docket No. B56-769-18197
Social Security No. [REDACTED]
Local Office No. 10

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE
IN LAW

EARLY SANDERS,

Plaintiff and
Appellant,

vs

MICHIGAN EMPLOYMENT SECURITY COMMISSION
and APPEAL BOARD OF THE MICHIGAN EMPLOY-
MENT SECURITY COMMISSION and CHRYSLER
CORPORATION,

Defendant and
Appellees.

No. 287-132

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L-1-E57

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OPINION

On certiorari the question before the court is whether the finding of the Appeal Board that the plaintiff knowingly and intentionally made a false statement and withheld material information to obtain unemployment benefits to which he was not entitled, is against the great weight of the evidence.

Defendant Appellees cite the case of State vs Barr, 63 Id. 59, [117 P (2d) 282] in support of their position. There the defendant was convicted of the crime of obtaining money under false pretenses, when he claimed unemployment benefits and certified that he had earned only \$6.00 from odd jobs when, in fact, he had earned \$18.00. The Idaho Supreme Court relied on both oral testimony and documentary evidence, the latter consisting of a false claim for unemployment compensation made in writing and signed by the claimant together with another written document.

Plaintiff relies in part upon the general proposition that there is a presumption against the existence of fraud and in favor of innocence, the presumption against fraud approximating in strength the presumption of innocence of crime. 37 CJS 393.

Reliance is also placed upon rulings of the appeal boards of both the States of Kansas and Washington. These two appeal boards have emphasized that there must be a wilful act and an intent to defraud before a disqualification may be assessed.

Certainly the burden should be upon the Commission to establish that fraud was committed, and fraud should not be presumed but established by competent proof that persuades one that a proper inference may be drawn. For it must be conceded that the Commission could not be expected to secure an admission by a claimant that he had committed a fraud. So, to prove an intent to defraud an inference must be drawn from the facts themselves.

What are the facts?

The record, Exhibit 7, establishes that the claimant remembered he was recalled in September and that he returned to work on a Thursday. It was also shown that the claimant received a telegram on Thursday to return to work, and returned that same day. On the very day that he received a telegram to return to work, namely, September 29, 1955, he had reported to the office of the Commission and had obtained a benefit check for the previous week. So one must consider when the claimant returned to the Commission office and signed Exhibit 4, and the certification on his check, Exhibit 10, he did it in the knowledge that he had received a benefit check on the same day that he had received a telegram to report to work and had in fact returned to work.

It is reasonable to require agents of the Commission to take reasonable precautions so that a mistake is not made or that fraud may not be committed. The Commission's agent testified that the claimant was asked about his earnings in the week in question. She said:

"Yes, I know that, that is definite, no question about that. I do not fill out the check unless I know what happened the week before, the week in question that he is to receive the benefit check; that I am certain of."

She did not require the claimant to fill in the day of the week and it is conceivable that had she so required, the claimant would have changed his entries. But that is conjecture. The fact remains that the dates he entered were wrong and that he had returned to work on the day he had received his previous benefit check.

It is, therefore, the holding of the Court that the ruling of the Appeal Board is not contrary to the great weight of the evidence. The order of the Appeal Board is affirmed.

GEORGE E. BOWLES
Circuit Judge

Dated: April 30, 1957