

1989

Billie J. Glass v. Doubletree, Inc : Brief of Respondent

Utah Court of Appeals

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Donald L. George; Industrial Commission of Utah.

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BRIEF

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~~890534-CA~~

IN THE UTAH COURT OF APPEALS

BILLIE J. GLASS,
Applicant-Respondent,

BRIEF OF RESPONDENT
INDUSTRIAL COMMISSION OF UTAH
Priority No. 6

vs.

Case No. 890534-CA

DOUBLETREE, INC., et al.,
Defendants-Appellants.

RANDALL GRAHAM,
Applicant-Respondent,

vs.

Case No. 890536-CA

BEST PRODUCTS, et al.,
Defendants-Appellants.

REXENE WINEGAR,
Applicant-Respondent,

vs.

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LAKEVIEW HOSPITAL, et al.,
Defendants-Appellants.

APPEAL FROM THE INDUSTRIAL COMMISSION OF UTAH

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APPEAL FROM THE INDUSTRIAL COMMISSION OF UTAH

I. JURISDICTION

The Court of Appeals has jurisdiction of these cases under Utah Code Ann. Section 78-2a-3(2)(a).

II. NATURE OF PROCEEDINGS

Appellants are petitioning the Court for review of three Orders Denying Motion for Review by Respondent Industrial Commission ("Commission"), all dated August 16, 1989, rejecting Appellants' contention that dismissal of claims must be with prejudice.

III. ISSUE

Is the Industrial Commission legally authorized to dismiss a claim without prejudice?

IV. DETERMINATIVE STATUTES

No statute directly addresses the stated issue of whether a claim can be dismissed without prejudice. No statute denies the Commission the authority to dismiss a claim without prejudice. Utah Code Ann. Section 35-1-16 grants the Commission broad authority to protect the welfare of employees.

V. STATEMENT OF THE CASES

The three Applicants-Respondents in these cases are employees who suffered compensable industrial injuries. Each has claimed additional benefits. Each Applicant's case has been dismissed without prejudice by the Commission for reasons specified in the Order of Dismissal.

Applicant Glass' claim was dismissed on May 2, 1989, for failure to advise the Commission of a current address and telephone number.

Applicant Graham's claim was dismissed on May 2, 1989, for failure to cooperate in investigating the case.

Applicant Winegar's claim was dismissed on April 4, 1989, for failure to actively prosecute the claim.

On May 4, 1989, the attorney for Defendants-Appellants filed Motions for Review in all three cases alleging that the Administrative Law Judge had no statutory authority to dismiss the claims without prejudice. The Commission subsequently denied these Motions on August 16, 1989, and Defendants-Appellants now appeal these denials.

VI. SUMMARY OF ARGUMENT

This case is governed by the Administrative Procedures Act, Utah Code Ann. Section 63-46b-1 et seq., and the Workers' Compensation Act, Utah Code Ann. Section 35-1-1 et seq. Under the latter statute, "[t]he order of the commission on review is final, unless set aside by the Court of Appeals," Utah Code Ann. Section 35-1-82.53(2), and "[t]he Court of Appeals has jurisdiction to review, reverse, or annul any order of the commission," Utah Code Ann. Section 35-1-86. Nothing in either the Workers' Compensation Act or the Administrative Procedures Act prohibits the Commission from dismissing a claim without prejudice. To allow dismissal only with prejudice would be inequitable to potential claimants and contrary to the remedial purpose of the statute.

VII. ARGUMENT

1. THE WORKERS' COMPENSATION ACT IS REMEDIAL IN NATURE AND SHOULD BE LIBERALLY CONSTRUED.

The Workers' Compensation Act gives the Commission broad authority to safeguard the interests of employees. As Utah Code Ann. Section 35-1-16(1) states, "It shall be the duty of the commission, and it shall have full power, jurisdiction, and authority to: (a) supervise every employment and place of employment and to administer and enforce all laws for the protection of the life, health, safety, and welfare of employees" The statute is designed to provide remedies to employees whose workplaces subject them to conditions that threaten their well-being. The Utah Supreme Court has recognized that statutes remedial in nature should be construed liberally to provide protection to the persons who are the object of the legislation. In upholding a claim for benefits under the Act, the court recognized that

[t]he purpose of the Workers' Compensation Act is to protect employees who sustain injuries arising out of their employment by affording financial security during the resulting period of disability. To give effect to that purpose, the Act should be liberally construed and applied to provide coverage. Any doubt respecting the right of compensation will be resolved in favor of the injured employee.

State Tax Commission v. Industrial Commission of Utah, 685 P.2d 1051, 1053 (Utah 1984); see also Heaton v. Second Injury Fund, 758 p.2d 957, 961 (Utah App. 1988); Norton v. Industrial Commission of Utah, 728 P.2d 1025, 1028 (Utah 1986).

2. DISMISSAL WITH PREJUDICE IS A FINAL AND APPEALABLE ORDER.

The Commission has recognized in dismissing the applications that Applicants' claims cannot go forward without further action by Applicants. The dismissals effectively deprive Applicants of a forum for their present claims. As noted by the Utah Supreme Court,

[t]he dismissal of an action, although without prejudice, constitutes an abatement for the time being. It is the equivalent of the common law plea in abatement. A dismissal not only postpones the action as a stay might have done, it discontinues the complaint completely, so as an entirely new suit must be instituted to bring the cause before the court again.

Power Train, Inc. v. Stuver, 550 P.2d 1293, 1294 (Utah 1976).

These dismissals act as a final adjudication of the issues now existing between Applicants and Defendants.

Following Defendants'-Appellants' reasoning, even the Commission's exercise of its continuing jurisdiction power to modify or change its former findings and orders under Utah Code Ann. Section 35-1-78(1) would deprive them of the final adjudication of issues for which they argue. Yet the authority

to make these alterations is clearly stated, restricted only by the Commission's lack of power to modify applicable statutes of limitations, as expressed in Subsection (3) of that provision. This power of modification is a recognition that the course of an industrial injury cannot be fixed by law, and its evolution may require an alteration in the responsibilities between an injured employee and his employer or the employer's insurer. It is significant that despite the Commission's modification power, "[t]he Court of Appeals has jurisdiction to review, reverse, or annul any order of the commission, or to suspend or delay the operation or execution of any order." Utah Code Ann. Section 35-1-86. That the Commission's power to modify does not rob its orders of their finality is further evidenced by the language of Utah Code Ann. Section 35-1-82.53(2): "The order of the commission on review is final, unless set aside by the Court of Appeals."

Another fact of significance is that Defendants-Appellants cannot point to any specific statutory language prohibiting the Commission from dismissing claims without prejudice. Their contention that a final determination precludes dismissal without prejudice is unsupported by the words of the legislation and contravenes its expressed remedial intent.

The sole practical effect of dismissal without prejudice is to prevent foreclosure of an entirely new claim

that Applicants might assert against Defendants at some future date. This approach balances the Commission's statutory mandate to protect the welfare of employees with the employers' need for final adjudication. The liberal construction to be afforded a remedial statute militates for no less.

VIII. CONCLUSION

The Industrial Commission's Order Denying Motion for Review should be affirmed in each case and Defendants-Appellants should be denied the relief they seek.

DATED this 12th day of February, 1990.

INDUSTRIAL COMMISSION OF UTAH

Donald L. George
By Donald L. George

ADDENDUM

Utah Code Ann. Section 35-1-16(1) (1989):

(1) It shall be the duty of the commission, and it shall have full power, jurisdiction, and authority to:

(a) supervise every employment and place of employment and to administer and enforce all laws for the protection of the life, health, safety, and welfare of employees

Utah Code Ann. Section 35-1-78(1) (1989):

(1) The powers and jurisdiction of the commission over each case shall be continuing. The commission, after notice and hearing, may from time to time modify or change its former findings and orders. Records pertaining to cases that have been closed and inactive for ten years, other than cases of total permanent disability or cases in which a claim has been filed as in Section 35-1-99, may be destroyed at the discretion of the commission.

Utah Code Ann. Section 35-1-78(3) (1989):

(3) (a) This section may not be interpreted as modifying in any respect the statutes of limitations contained in other sections of this chapter or Chapter 2, Title 35, of the Utah Occupational Disease Disability Law.

(b) The commission has no power to change the statutes of limitation referred to in Subsection (a) in any respect.

Utah Code Ann. Section 35-1-82.53(2) (1989):

(2) The order of the commission on review is final, unless set aside by the Court of Appeals.

Utah Code Ann. Section 35-1-86 (1989):

The Court of Appeals has jurisdiction to review, reverse, or annul any order of the commission, or to suspend or delay the operation of any order.

Utah Code Ann. Section 78-2a-3(2)(a) (1989):

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction over interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, Board of State Lands, Board of Oil, Gas, and Mining, and the state engineer

CERTIFICATE OF MAILING

I certify that on the 12th day of February, 1990, a copy of the attached BRIEF in the case of Billie Glass, Randall Graham, and Rexene Winegar was mailed to the following persons at the following addresses, postage prepaid.

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