

IN THE SUPREME COURT OF FLORIDA

UNEMPLOYMENT APPEALS COMMISSION

Petitioner,

v.

Case No. 68,145

ZACHARY S. COMER,

Respondent.

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UNEMPLOYMENT APPEALS COMMISSION,

Petitioner,

v.

Case No. 68,442

PIERRE J. RENELUS,

Respondent.

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INITIAL BRIEF ON THE MERITS

OF

RESPONDENT

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Zachary S. Comer, Pro Se  
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## PREFACE

The following reference words and symbols will be used throughout this brief:

1. "Claimant" will designate Respondent, Zachary S. Comer;
2. "Commission" will designate Petitioner, Unemployment Appeals Commission;
3. "Florida Statutes", unless otherwise indicated, will designate Florida Statutes (1983);
4. "R" will designate the record.

TABLE OF CITATIONS

1. Garcia v. Department of Labor and Employment Security, 426 So.2d 1171 (Fla. 3rd DCA 1983);
2. Gilles, et al. v. Department of Human Resources Development, et al., 11 Cal.3d 313, 113 al Rptr 374, 521 P 2d 110 90 ALR 3d 970;
3. Sagaert v. State Department of Labor And Employment Security, 418 So 2d 1228 (Fla.3d DCA 1982);

Statutes

1. 443.151(6)(b)(c).

Other

1. Florida State Constitution, Article 9;
2. United States Constitution, Article 14, Section 1;
3. Genesis, Chapter 2:15 - 17.

STATEMENT OF THE CASE AND THE FACTS

Comer Case

The statement of facts of the Commission is accurate and adopted.

ISSUE I

THERE IS COMPETENT, SUBSTANTIAL EVIDENCE IN THE RECORD AND A REASONABLE BASIS IN THE LAW TO SUPPORT THE CONCLUSION THAT THE FINDINGS OF THE APPEALS REFEREE, ADOPTED BY THE UNEMPLOYMENT APPEALS COMMISSION IS NOT WITHIN THE CONSTITUTIONAL CONSTRAINTS OF THE FLORIDA STATE CONSTITUTION, ARTICLE 9; THE UNITED STATES CONSTITUTION AMENDMENT 14, SECTION I, AND SECTION 443.151 (6) (c) OF THE FLORIDA STATUTES.

ISSUE II

RECOVERY OR RECOUPMENT OF THE OVERPAYMENT WOULD DEFEAT THE LEGISLATIVE PURPOSE OF THE UNEMPLOYMENT COMPENSATION LAW AND BE INCONSISTENT WITH THE LEGISLATIVE MANDATE OF WAIVER OF RECOUPMENT ON THE BASIS OF EQUITY AND GOOD CONSCIENCE.

ISSUE I.

THERE IS COMPETENT, SUBSTANTIAL EVIDENCE  
IN THE RECORD AND A REASONABLE BASIS IN THE  
LAW TO SUPPORT THE CONCLUSION THAT THE  
FINDINGS OF THE APPEALS REFEE, ADOPTED  
BY THE UNEMPLOYMENT APPEALS COMMISSION IS  
NOT WITHIN THE CONSTITUTIONAL CONSTRAINTS  
OF THE FLORIDA STATE CONSTITUTION, ARTICLE 9;  
THE UNITED STATES CONSTITUTION AMENDMENT 14,  
SECTION I, AND SECTION 443.151 (6)(c) OF  
THE FLORIDA STATUTES.

STATEMENT OF THE CASE AND THE FACTS

Comer Case

The statement of facts of the Commission is accurate  
and adopted.

Summary Of Argument

State action on unemployment compensation overpayments  
which occur when not as a consequence of fraud, are addressed  
by Florida Statutes as follows:

443.151(6)(b)

If any person, other than by reason of his  
FRAUD, has received any sum as benefits under  
this chapter to which, under redetermination  
or decision pursuant to this section, he has  
been found not entitled, he shall be liable to  
repay such sum to the division for and on behalf  
of the trust fund or, in the discretion of  
the division, shall have such sum deducted from  
any future benefits payable to him under this  
chapter.

No such recovery or recoupment of such sum may  
be effected after two years from the date of  
such redetermination or decision.

443.151(6)(c)

No recoupment from future benefits shall be  
had if such sum was received by such person  
without fault on his part and such recoupment  
would defeat the purpose of this chapter or  
would be against equity and good conscience.

The just quoted statutory provisions allegedly makes unemployment compensation claimants liable for restitution of overpayments without exception, except if recoupment would defeat the purpose of this chapter or would be against equity and good conscience.

Citing Garcia v. Department of Labor and Employment Security, State of Florida, Unemployment Appeals Commission, 426 So.2d 1171 (Fla. 3d DCA 1983) and Sagaert v. State Department of Labor and Employment Security, Unemployment Appeals Commission, 418 So. 2d 1228 (Fla. 3d DCA 1982).

Respondent argues that the waiver considerations contained in F.S. 443.151(6)(c) are controlling against recoupment and recovery until the Commission has allowed Respondent the opportunity to present evidence in support of consideration of waiver of overpayment based upon consideration of equity and good conscience.

Additionally, due to the statutory language of F.S. 443.151(6)(c), there can be no constitutionally lawful decision by any appeals referee which ignores waivers of recoupment as a matter of law as evidenced by the decisions in this case.

In Sagaert, supra, the Court held:

We can discern no logical reason for granting the section 443.151(6)(c), supra, defenses of statutory purpose and equity and good conscience to someone who will still be receiving benefits, while withholding these defenses from someone whose benefits are terminated and who is required to repay sums to the division. A statute will not be interpreted to achieve an illogical or absurd result. McKibben v. Mallory, 293 So.2d 48 (Fla. 1974); Good Samaritan Hospital Association v. Simon, 370 So.2d 1174 (Fla. 4th DCA 1979), 418 So. 2d 1230. (Footnote Omitted).

ISSUE II

RECOVERY OR RECOUPMENT OF THE OVERPAYMENT  
WOULD DEFEAT THE LEGISLATIVE PURPOSE OF  
THE UNEMPLOYMENT COMPENSATION LAW AND BE  
INCONSISTENT WITH THE LEGISLATIVE MANDATE  
OF WAIVER OF RECOUPMENT ON THE BASIS OF  
EQUITY AND GOOD CONSCIENCE.

Within the confines of the Florida Unemployment Statutes, there is not to be found a specific definition of equity and good conscience.

Additionally, it is apparent that the counsel for the Commission has likewise been unsuccessful at finding any "on point" provisions of Federal law relative to equity and good conscience waiver in unemployment compensation.

On appeal, the Commission argues in effect that there are no circumstances where anyone is entitled to a waiver of the overpayment in the interest of equity and good conscience. Such a position is not consistent with the statutory provisions of Florida law, to the contrary.

No evidence was considered in this case by the referee or the Commission, on the matter of waiver of the overpayment, thereby denying the record evidence and the Respondent due process rights afforded by the Constitutions of Florida and the United States. Florida State Constitution, Article 9, USC Amendment 14.

This act of the Petitioner is a prima facie showing of the fundamental denial of procedural and substantive due process to all who seek waiver of overpayment under equity and good conscience statutory provisions.

Apparent from the record, the Commission has abused their discretion under Florida law by not permitting any consideration of waiver of overpayment on the pretext that it was not allowed as a matter of law.

Fortunately for all parties, the issues raised by this case have already been adequately addressed under essentially identical circumstances by the Supreme Court of the State of California.

In Gilles v. Department of Human Resources Development, 90 ALR 3d (1974), the Court stated:

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...We note, however, that the federally administered social security and unemployment compensation programs permit recoupment, by means of setoff or civil action, only when such recoupment will not defeat the statutory purpose nor contravene equity and good conscience, and that federal cases and regulations interpret such language to require consideration of the individual circumstances of each claimant. (See supra at pp 324-325, 11 Cal. 3d 313).

NOTE:

A COPY OF THE ALR CASE HAS BEEN ATTACHED FOR THE COURT'S REVIEW.

## CLOSING ARGUMENT

At least seven jurist, distinguished members of the Florida Bar have reviewed 443.151(6)(b) and (c), and have not agreed upon the interpretation of the application of this Florida law to this situation. How then does the Commission expect an unemployed worker to be placed on notice that they are at risk of financial devastation to use unemployment benefits, if they are later deemed not entitled to benefits. There is precedent for this type of notice which is fundamental to due proces.

The LORD GOD took man and put him  
in the Garden of Eden to till it and  
and keep it. And the LORD GOD commanded  
the man, saying: "you may freely eat of  
every tree of the garden, but of the tree  
of the knowledge of good and evil you shall  
not eat.

For in the day that you eat of it, you  
shall die. (Genesis 2:15-17).

Clearly, man was not originally confused by God's law which made the unacceptable known and the consequences known in simple terms which no one could disagree.

Apparent in this case at bar is total disagreement between learned men of considerable expertise in reading and applying the laws of the State of Florida.

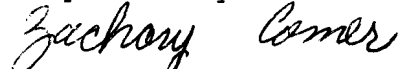
A conclusion can be drawn that the law is overly vague and ambiguous, and ergo, unconstitutional.

Another conclusion can be reached that the Commission can chose to ignore in total the Federal policy on waiver of overpayment on this Federal unemployment claim! To accept this position, would also require disregarding the Florida Statute provisions as well, which denies citizens of Florida a

legislative right, guaranteed by statutes. Such action by the Commission would be based upon judicial encroachment into exclusive legislative prerogatives. This position has been rejected by both the 3rd and 4th District Courts of Appeal.

WHEREFORE, the only logical, legally equitable and statutorily consistent position which would satisfy the nucleus of operative facts evidenced in this case would be a decision which, as in Gilles, allows the decision on waiver of overpayment to be considered on a case-by-case basis.

Respectfully submitted,




Zachary S. Comer, Pro Se

ZC/zc

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed to John R. Greenwood, Esquire, Haitian American Community Association of Dade County (HACAD), Inc., 5901 Northwest 2 Avenue, Miami, Florida 33127, and to John D. Maher, Attorney for Commission, 1321 Executive Center Drive, East, 221 Ashley Building, Tallahassee, Florida 32301-8247, this 25 day of April, 1986.

  
Zachary Comer, Pro Se