

IN THE SUPREME COURT OF FLORIDA

CASE NO. 69,462

UNEMPLOYMENT APPEALS COMMISSION, )

Petitioner, )

vs. )

JOANNA W. CASSADY, )

Respondent. )

\_\_\_\_\_ )

FILED  
NOV 17 1968  
CLERK, SUPREME COURT  
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Deputy Clerk

On petition for Discretionary Review of a Decision of the District Court of Appeal of the Third District of Florida

ANSWER BRIEF OF RESPONDENT

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ALLOW CLAIMANTS TO RAISE A DEFENSE TO REPAYMENT, WHEN  
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## STATEMENT OF THE CASE AND OF THE FACTS

Claimant submits the following to clarify the Commission's Statement of the Case and of the Facts:

Claimant, who is deaf, was found qualified for benefits in January 1984. (R 9) The employer agreed that, due to a previous neck and back on-the-job injury, she was only able to perform light duty work, and that since December 1983, the employer was unable to provide that type of work any longer. (R 7-8) Claimant was therefore not deemed to be guilty of "misconduct," and began receiving benefits for the period beginning in December 1983. (R 9) She was never informed that in the event that benefits might in the future be deemed to have been improperly paid, she would be subject to an action by the Division for overpayment. No statutory provision nor Division regulation has been found which requires notice to claimants that repayment will be sought in the event of overpayment. As with all claimants deemed eligible, Respondent sought suitable employment and complied with all Division requirements. See, §443.101, Fla. Stat.

Subsequently, in March 1984 the United States Department of Labor awarded claimant retroactive benefits under the Federal Employees Compensation Act (FECA) due to her job-related disability. (R 97) The Federal claims examiner agreed that claimant could perform light duty work. (R 102) In April 1984 claimant's union representative apprised the Florida Division of Unemployment Compensation in writing that claimant had received benefits under FECA. (R 96) Later, the union representative and the claimant again informed the Division, by letter, that claimant

was receiving FECA benefits (R 98), and claimant also completed a Division form to that effect. (R 206) A letter from the Department of Labor informed claimant that she was receiving a retroactive award, for the period from February to May, and future benefits beginning in May. (R 100) An enclosure to that letter informed claimant to seek employment consistent with her physical ability. (R 101)

Thereafter, the Division sought repayment of all unemployment benefits solely on the grounds that she received Federal worker's compensation benefits covering the same period. §443.101 (3)(b), Fla. Stat. (erroneously cited as §443.06(3)(b)(1) (R 15)

The appeals referee refused to allow as a defense to the repayment request that it would frustrate the purpose of the statute or violate equity or good conscience, but noted that "although [she] might be entitled to relief on equitable grounds, he was 'without power to waive the repayment of an overpayment.'" Cassady v. Florida Unemployment Appeals Commission, Case No. 85-2813 (Fla. 3d DCA September 30, 1986)(quoting referee's decision) (R 314-18). The referee's decision was upheld by the Commission (R 330), but reversed by the Third District. The Court held that claimant should have been allowed to raise those defenses and remanded the case, while certifying its decision as expressly and directly conflicting with Sheppard v. State Department of Labor and Employment Security, 442 So.2d 1114 (Fla. 4th DCA 1983).

This case is before this Court upon the Commission's petition to invoke discretionary jurisdiction pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv).

## PREFACE

The following words and symbols will be used throughout:

"Claimant" will refer to Respondent, Joanna W. Cassady.

"Employer" will refer to the U.S. Postal Service.

"Commission" will refer to Petitioner, Unemployment Appeals Commission, and "Division" will refer to the Division of Unemployment Compensation.

"Fla. Stat." will refer to Florida Statutes (1985).

"R" will refer to the Record on Appeal.

## SUMMARY OF ARGUMENT\*

Federal statutes require that States pay unemployment benefits "when due." The United States Supreme Court has held this means payment must be made upon the earliest favorable determination to a claimant because Congress intended claimants have the right to immediately spend these funds.

Upon an ultimate determination that claimant was not eligible, a State may seek repayment or recoupment. Claimants, however, should be allowed to present a defense that repayment under the claimant's circumstances would defeat the purpose of the statute or be against equity or good conscience.

Even an initial notice that the State will demand repayment or recoupment in the event of a reversal of the favorable decision, does not bar the claimant's right to present such defenses.

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\*. Claimant adopts by reference the Argument contained in the answer brief of Respondent Pierre Renelus in Unemployment Appeals Commission v. Renelus, Florida Supreme Court, Case No. 68,442. Claimant's Argument here supplements the Argument contained in that answer brief.

## ARGUMENT

THE FLORIDA UNEMPLOYMENT STATUTE MUST BE READ TO ALLOW CLAIMANTS TO RAISE A DEFENSE TO REPAYMENT, WHEN REPAYMENT WOULD DEFEAT THE PURPOSE OF THE STATUTE OR VIOLATE EQUITY OR GOOD CONSCIENCE, IN ORDER TO COMPORT WITH THE PURPOSE OF THE FEDERAL MANDATE REQUIRING PAYMENT OF BENEFITS "WHEN DUE": THAT CLAIMANTS RECEIVE AND SPEND CASH WHEN THEY NEED IT MOST.

States must pay unemployment benefits "when due." 42 U.S.C. §503(a)(1). Despite the employer's right to appeal and ultimately reverse the determination, the Supreme Court has mandated that the benefits must be paid when the initial determination favorable to the claimant is made.

Chief Justice Burger writing for a unanimous Supreme Court declared:

Unemployment benefits provide cash to a newly unemployed worker 'at a time when otherwise he would have nothing to spend' . . .

\* \* \*

Early payment of insurance benefits serves to prevent a decline in the purchasing power of the unemployed. California Dept. of Human Resources v. Java, 402 U.S. 121, 131-32, 91 S.Ct. 1347, 28 L.Ed.2d 666 (1971)(emphasis added).

Citing this language, the California Supreme Court stated:

Achievement of . . . [Congressional] objectives requires not only prompt payments of benefits . . ., but the free availability to meet current expenditures. (citations omitted.) Simply putting money into the worker's hands will neither alleviate the hardship of unemployment nor maintain purchasing power if that worker feels obligated to hold that sum intact until the final conclusion of the appeal. Gilles v. Dept. of Human Resources Development, 11 Cal.3d 313, 521 P.2d 110 (1974).

California's statute provided notice that repayment would be sought if the claimant was ultimately deemed ineligible. The Court held notice alone could not automatically defeat a defense of equity or good conscience, a defense statutorily allowed pursuant to California statute in repayment and recoupment cases. Notice was merely one relevant factor to be considered in an equitable defense. Other factors included the origin of the overpayment, reliance, and extraordinary hardship that might be caused by the repayment. Furthermore,

[t]o the extent that claimants are induced by that notice to postpone receipt of benefits, or are inhibited from using benefits to maintain their level of consumer purchases, the notice defeats the objectives of the program. (emphasis added.)

Florida claimants are not even given notice that they will be liable for overpayments.<sup>1</sup> Thus, claimants spend their benefit money on necessities to tide themselves over, as Congress intended, only to be faced with a sudden demand for repayment against which there is no defense. It is particularly ironic that while the Division appears to argue that claimants are presumed to know the statute, it does nothing to insure that they do. Failure to even notify claimants of the drastic consequences of subsequently being deemed ineligible, and therefore liable without defense, frustrates the objectives of the Federal statute. At a minimum, claimants must be allowed to explain their individual

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<sup>1</sup>. By statute, California allows such defenses in cases of repayment and recoupment; Florida statutes would allow them only for recoupment actions from future benefits.

circumstances, change in position due to reliance, and ability to repay. To do otherwise would render illusory the "benefits" which the claimant is "paid."

And even if claimants knew, or were deemed to constructively know, that no defense would be allowed, the chilling effect of that knowledge would unnecessarily undercut the Congressional objectives. Unemployment benefits are specially earmarked to be spent, not held in abeyance. Java at 132.

The interpretation of "when due" in Java, as further illuminated by Gilles, compels the conclusion that a State seeking repayment must consider the surrounding circumstances of a claimant's receipt of benefits by a claimant ultimately deemed ineligible. To exclude these defenses, as the Florida statute does in overpayment actions, (but not in actions for recoupment from future benefits), defeats the objectives of the Federal statute: making cash available to claimants in a meaningful way as quickly as possible. As the Third District noted in Saegert v. State Dept. of Labor, 418 So.2d 1228, 1230 (Fla. 3d DCA 1982), "statutes must not be interpreted to achieve an illogical or absurd result. McKibbon v. Mallory, 293 So.2d 48 (Fla. 1974); Good Samaritan Hospital Association v. Simon, 370 So.2d 1174 (Fla. 4th DCA)."

In the case at bar, the Division gave Claimant no notice of the dire consequences of overpayment, a sudden \$4,500 debt; the Claimant gave the Division notice of the very facts which were later used to demand repayment. She was never determined to be

ineligible due to her misconduct or fault. Rather, the sole reason for the overpayment was her retroactive, and later receipt of Federal worker's compensation benefits. At the least she should be allowed to explain her needs at the time the unemployment benefits were her only income. To deny her that opportunity renders meaningless the Federal mandate that payments be made "when due."<sup>2</sup>

There are two types of disqualifications from unemployment benefits pursuant to the Florida statute: fault-based and cost-based. §443.101, Fla. Stat. Fault-based reasons include discharge for misconduct, leaving a job voluntarily, failure to seek suitable jobs, criminal or dishonest conduct connected to the job, and fraud. Non-fault based reasons, principally related to keeping down the cost of unemployment insurance, include receipt of pension or worker's compensation benefits (to the extent of those benefits).


The reversal of the Claimant's benefits were due to no fault of the Claimant, and to not allow such claimants the ability to raise a defense of equity or good conscience is grossly unfair and defeats the purpose of the Federal unemployment program: making cash freely available for claimants to spend.

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2. Claimant assumes that the Commission agrees that the Supremacy Clause, United States Constitution, Art. VI, §2, mandates that state statutes in conflict with Federal statutes must yield, but argues that the Florida statute does not conflict in this case. (Commission's initial brief at 9.)

CONCLUSION

The ultimate relief sought is the opportunity for Claimant to be able to explain why recovery of benefits in her case would defeat the statutory purpose or be against equity or good conscience. The purpose of the Federal statute, as interpreted by the U.S. Supreme Court in Java, and illuminated by the California Supreme Court in Gilles, requires that the Florida statute be construed to allow those defenses in cases of overpayment as well as recoupment.

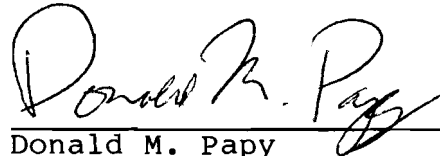


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CERTIFICATE OF SERVICE

I certify that a copy hereof will be hand-delivered by Federal Express to John D. Maher, Esquire, Unemployment Appeals Commission, Ashley Building, Suite 221, 1321 Executive Center Drive, East, Tallahassee, Florida 32301, and mailed to John R. Greenwood, Esquire and Abbe Cohn, Esquire, Attorneys for Pierre Renelus in Case No. 68,442, HACAD, 5901 N.W. 2nd Avenue, Miami, Florida 33127, and Zachary S. Comer, pro se in Case No. 68,145, 5920 S.W. 44th Terrace, Miami, Florida 33155, Nov. 14, 1986.



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Donald M. Papy