

IN THE SUPREME COURT OF THE STATE OF FLORIDA

Case No. SC04-591

**Petition for Discretionary Review of
A Decision of the District Court of Appeal of Florida
Fifth District**

Mark Tetzlaff

Petitioner,

v.

Florida Unemployment Appeals Commission,

Respondent.

**JURISDICTIONAL ANSWER BRIEF OF RESPONDENT
FLORIDA UNEMPLOYMENT APPEALS COMMISSION**

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STATEMENT OF THE CASE AND THE FACTS

This is a petition for discretionary review pursuant to Florida Rules of Appellate Procedure 9.030(a)(2)(A) and 9.120. of a decision of the Fifth District Court of Appeal that affirmed a final administrative order of the Unemployment Appeals Commission. Petitioner here was the appellant before the Commission. Petitioner seeks the Court's review of the Fifth DCA's decision on the grounds that it expressly and directly conflicts with decisions of this Court's decision in

Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150 (Fla. 1980), the Fourth DCA's decision in Kaufman v. Baker, 392 So.2d 13 (Fla. 4th DCA 1980), and Dines v. Florida Unemployment Appeals Commission, 730 So.2d 378 (Fla. 3d DCA 1999).

The case originated with the unemployment compensation claim of Mark Tetzlaff (hereinafter referred to as the claimant). The claimant was initially held disqualified for benefits, he appealed the decision and requested a hearing before an unemployment compensation appeals referee. The claimant was advised by the disqualifying determination:

IF UNEMPLOYED YOU MUST CONTINUE REPORTING ON YOUR
CLAIM UNTIL ALL REDETERMINATIONS/APPEALS ARE

RESOLVED.

At the conclusion of the hearing, the appeals referee ruled in the claimant's favor. However, the claimant was granted benefits for only the period of time between February 2002 and March 23, 2002. Benefits for the period of time between March 24, 2002 and August 10, 2002 (the period of time during which the appeal was pending) were denied because the claimant failed to continue reporting on his claim as he had been instructed. Upon review to the Unemployment Appeals Commission, the Commission affirmed the referee's decision denying the additional benefits.

The claimant appealed the Commission's order to the Fifth District Court of Appeal. The Unemployment Appeals Commission is a statutory respondent to appeals taken from its orders to the district courts of appeal. See §443.151(4)(e), Fla. Stat. The Fifth DCA affirmed the Commission's denial of additional benefits. The claimant petitions the Court to invoke its discretionary conflict jurisdiction.

SUMMARY OF ARGUMENT

When an unemployment compensation claimant is determined to be disqualified for benefits, they are advised of their right to file an appeal. The disqualification results in a suspension of benefits during the pendency of the appeal, but they are advised that they must continue reporting on their claims. If they fail to continue reporting, and their appeal is successful, they will be entitled to back benefits for the period they reported, if any.

In Dines v. Florida Unemployment Appeals Commission, 730 So.2d 378 (Fla. 3d DCA 1999), the Third DCA emphatically stated that this statutory requirement is meaningless and refused to enforce it.

In the case under review, the Fifth DCA enforced the statute by affirming an order of the Florida Unemployment Appeals Commission that denied benefits to a claimant who was successful on appeal but failed to continue reporting on his claim during a portion of the pendency of the appeal. The court declined, however, to express a view on the correctness of Dines.

In Costerall v. Unemployment Appeals Commission, 874 So.2d 43 (Fla. 2d DCA 2004), the Second DCA was presented with the same issue. In Costerall, the Second District

expressly disagreed with Dines and certified the conflict of the two opinions. Respondent believes the Court should exercise its discretionary jurisdiction to resolve this conflict and restore harmony to the precedents.

ARGUMENT

ALTHOUGH FOR DIFFERENT REASONS, THE RESPONDENT COMMISSION AGREES WITH PETITIONER THAT DINES V. UNEMPLOYMENT APPEALS COMMISSION, 730 So.2d 378 (Fla. 3d DCA 1999) CONFLICTS WITH THE RESULT REACHED IN THE DECISION OF THE FIFTH DCA.

The Commission does not perceive anything expressed in the opinion of the Fifth DCA under review that directly conflicts with the Court's opinion in Applegate v. Barnett Bank of Tallahassee, 377 So.2d 1150 (Fla. 1980), or the Fourth DCA's opinion in Kaufman v. Baker, 392 So.2d 13 (Fla. 4th DCA 1980). The Fifth DCA, however, does reach a result that directly conflicts with the Third DCA's opinion in Dines v. Florida Unemployment Appeals Commission, 730 So.2d 378 (Fla. 3d DCA 1999).

The Fifth DCA's opinion enforces the unemployment compensation statute's provisions that require claimants to periodically report to the agency on their claims to confirm that they meet the statute's eligibility criteria. See §§443.091(1)(a) & (b) and 443.111(1)(b), Fla. Stat. Those provisions require claimants to demonstrate that they are able to work and available for work; actively seeking work; have not refused any offers of work; and to report any earnings for work performed during the pendency of the appeal. Id. See also §§ 443.036(43)(a), 443.101(2), Fla. Stat. In stark contrast, the Third DCA in Dines

characterized those statutory requirements as "advisory or directory only" and the reporting requirement was characterized merely a "series of useless acts" and a "non-essential mode of proceeding." Dines, 730 So.2d at 379, quoting Savage v. Macy's East, Inc., 719 So.2d 1208, 1209 (Fla. 3d DCA 1998). The Dines opinion makes a mockery of the legislature's requirement that unemployment compensation claimants must demonstrate compliance with these provisions during the pendency of appeals while they are not entitled to receive benefits.

The conflict between these unambiguous provisions of the statute and the Dines opinion was recently certified by the Second DCA in Costarell v. Unemployment Appeals Commission, 874 So.2d 43 (Fla. 2d DCA 2004). In Costarell, the Second DCA court a recent amendment to the unemployment compensation statute that provides:

Each claimant must continue to report regardless of any appeal relating to her or his eligibility or disqualification for benefits.

Costarell, 874 So.2d 43 & n.1, quoting Ch.2003-36, §§ 23, 25. amending §§443.091(1)(a) & (b) and 443.111(1)(b), Fla. Stat. (2002). The court observed that Florida Statutes (2002) not (2003) was applicable to the case before it, but cited the amendment as indicative of the legislative behind the 2002 version, citing Finley v. Scott, 707 So.2d 1112,

1116-17 (Fla. 1998).

In Dines and Savage, the Third DCA declared that unemployment compensation claimants were not required to comply with the legislature's requirement that they report on their claims while their benefits were suspended pending appeals on their entitlement.

In this case, the Fifth DCA held that the claimant Tetzlaff was required to comply with the reporting requirements of the statute.

In Costarell, the Second DCA held that the claimant Costarell was required to comply with the reporting requirements of the statute. The Second DCA also expressed disagreement with the Third DCA opinion in Dines and certified the conflict.

An obvious conflict exists among the district courts of appeal in the interpretation and application of Sections 443.091(1)(a) & (b) and 443.111(1)(b), Florida Statutes. The jurisdiction of this Court is needed to resolve it.

CONCLUSION

Conflict exists among the Second, Third and Fifth District Courts of Appeal. Respondent Unemployment Appeals Commissions asks the Court to exercise its discretionary jurisdiction to resolve it.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed to the following person on this **15th day of July 2004**: Mike Jorgensen, Counsel for Petitioner; 7555 Beach Blvd., Jacksonville, FL 32216.

CERTIFICATE OF TYPEFACE COMPLIANCE

I HEREBY CERTIFY that the Courier New 12-point font was used to prepare this brief and complies with Florida Rule of Appellate Procedure 9.210(a)(2).

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