

**IN THE CHANCERY COURT FOR RUTHERFORD COUNTY, TENNESSEE
AT MURFREESBORO**

XXXXXXXXXX,)	
)	
Plaintiff,)	
)	
vs.)	No.
)	
JAMES G. NEELY, Commissioner of the)	
Tennessee Department of Labor and)	
Workforce Development and)	
XXXXXXXXXX CORPORATION,)	
)	
Defendants.)	

COMPLAINT

Plaintiff XXXXXXXXXX seeks judicial review of a decision made by the Tennessee Department of Labor and Workforce Development (hereinafter "Department") that denied his application for unemployment compensation benefits. Specifically, Plaintiff asserts that the administrative record does not contain substantial and material evidence to support a conclusion that he did not have good cause for untimely filing an appeal for benefits. Further, Plaintiff asserts that he was never afforded proper notice of Department determinations and appeal procedures, nor was he provided a fair hearing before the Department of Labor and Workforce Development, and that said actions amount to a denial of Plaintiff's due process rights, as well as violations of Tennessee law, and of Title VI of Civil Rights Act of 1964 and the regulations promulgated thereunder.

Jurisdiction

1. This Court has jurisdiction to review decisions made by the Tennessee Department of Labor and Workforce Development regarding claims for unemployment

compensation benefits. T.C.A. § 50-7-304(i)(1). Venue is appropriate in this Court because Plaintiff is a resident of Rutherford County.

Parties

2. Plaintiff Javier B.XXXXXXXXXX is an adult resident of Rutherford County, Tennessee. His application for unemployment compensation has been denied by the Tennessee Department of Labor and Workforce Development.

3. Defendant James G. Neely is the Commissioner of the Tennessee Department of Labor and Workforce Development. One of his responsibilities is to administer the Tennessee Employment Security Law. The Department receives federal funds. Commissioner Neely is made a defendant as directed by T.C.A. § 50-7-304(i)(1).

4. Defendant XXXXXXXXXXXX Corporation is a business operating in Rutherford County, Tennessee. Mr.XXXXXXXXXX was employed by XXXXXXXXXXXX Corporation until his employment was terminated by that company on January 8, 2004. XXXXXXXXXXXX Corporation is Plaintiff's base employer and is named as a defendant pursuant to the provisions of T.C.A. § 50-7-304(i)(1).

Factual Allegations

5. Plaintiff XXXXXXXXXXXX is a lawful permanent resident of the United States. He is a first-generation immigrant from Mexico who speaks and understands very little English. Spanish is his primary language. Plaintiff was employed with Defendant XXXXXXXXXXXX Corporation, a company that placed him to work for YYYYYY Computer in Lebanon, Tennessee, beginning on April 17, 2003, for nine (9) months of employment. Mr.XXXXXXXXXX was responsible for lifting boxes onto the line. His employment was scheduled to terminate on January 8, 2004.

6. On January 5, 2004, Plaintiff was approached by a representative from Defendant XXXXXXXXXX who told him his last day would be January 8, 2004. Plaintiff then requested a form he could take to the unemployment office. Defendant XXXXXXXXXX assured him that it would complete and deliver the necessary paperwork.

7. On January 9, 2004, Plaintiff went to the unemployment office in Murfreesboro. He was given a form to fill out, which was in English. No one in the office spoke Spanish, there were no posters on the wall in Spanish, and no brochures available in Spanish. Plaintiff completed the form to the best of his abilities.

8. On January 21, 2004, the Department mailed Plaintiff a request for more information. A Spanish-speaking friend advised him that the letter stated that Defendant XXXXXXXXXX had stated that Plaintiff left work to attend school. Plaintiff took the letter to Defendant XXXXXXXXXX and explained that he was not going back to school and that there had been some kind of mistake. Plaintiff was told that Defendant XXXXXXXXXX would correct it. Plaintiff did not understand that any further action was required on his part.

9. On January 31, 2004, the Department mailed the initial decision to Plaintiff advising him that he was not entitled to unemployment compensation benefits because he had allegedly quit his job to go back to school. In that same letter/notice, the Department told the Plaintiff that he had just fifteen days to request an appeal. Plaintiff could only understand a little of the letter due to his limited English proficiency. Plaintiff tried to translate the letter using an "English to Spanish" dictionary but could not understand it. He asked friends and community members to assist him in understanding the letter. Plaintiff understood that there was a date on the letter, but he did not understand the

significance of the date. Finally, a friend suggested that he see an employee at the Department of Labor and Workforce Development in Nashville named Evelyn Gaines, who speaks both Spanish and English. Ms. AAAAAA explained to Plaintiff that he had missed his appeal deadline.

10. Ms. Gaines assisted Plaintiff in drafting a letter requesting a hearing on the filing of a late appeal. Plaintiff conveyed to Ms. AAAAAA that he needed an interpreter for the hearing, and the letter she assisted him in drafting clearly states that Plaintiff does not speak or read English.

11. A phone hearing was scheduled by the Appeals Tribunal for April 20, 2004. At that time, Plaintiff stated that he needed an interpreter. No interpreter was provided. As a result, the hearing was cancelled.

12. On May 21, 2004, a second phone hearing was set. Again, the Department did not provide an interpreter. The employer, Defendant XXXXXXXXXX Corporation, did not appear for the hearing. After several calls and delays, the hearing was cancelled because the Department could not locate an interpreter.

13. On June 8, 2004, a friend helped Plaintiff draft another letter to the Appeals Tribunal reiterating his request for a late appeal and stating explicitly that he needed an interpreter to assist him at that hearing.

14. On June 17, 2004, a third phone hearing was held. Again, the Department failed to provide an interpreter. In desperation, Plaintiff asked his neighbor, Rosemary Madera, to translate the call. Ms. Madera is not a certified interpreter, and does not have any experience with unemployment compensation law. Again, the former employer XXXXXXXXXX did not appear for the hearing. The Notice which the Department sent to

Plaintiff and to the former employer announcing the June 17 hearing stated, in very technical statutory language, that the issues to be considered by the Appeals Tribunal were whether Plaintiff had good cause to quit his employment and whether there was good cause for the late appeal. However, at the hearing, the appeals referee asked no questions about why the appeal was filed late and did not question Plaintiff as to why he did not have a representative. The testimony at the June 17 hearing centered almost exclusively on the circumstances surrounding Plaintiff's termination from employment.

15. In a decision issued on June 17, 2004, the Appeals Tribunal found that Plaintiff did not have good cause for his late appeal. The decision contained no discussion of the merits of his claim. The Appeals Tribunal concluded that it was without jurisdiction to consider the appeal. Following receipt of that Decision, Plaintiff retained the Legal Aid Society of Middle Tennessee and the Cumberlands to represent him.

16. On July 1, 2004, Plaintiff filed an appeal with the Board of Review. An Acknowledgement of Appeal form was mailed to Plaintiff on July 7, 2004, in response to which Plaintiff requested another hearing to present additional evidence. Plaintiff also sent an Affidavit to the Board of Review explaining his limited English skills.

17. On August 9, 2004, the Board of Review considered Plaintiff's timely appeal of the Appeals Tribunal decision of June 17, 2004, considering whether good cause existed for extending the time limit for appeals to the Appeals Tribunal pursuant to T.C.A. § 50-7-304(c). It denied the appeal.

18. On August 19, 2004, Plaintiff filed a Petition to Rehear with the Board of Review.

19. On September 10, 2004, the Board of Review denied that Petition. Plaintiff now timely appeals that decision. Administrative appeals have been exhausted.

Causes of Action

20. A claimant for unemployment compensation benefits has a right to a fair hearing if his claim is initially denied. T.C.A. § 50-7-304(c)(1); 42 U.S.C. § 503(a)(3). The right to a fair hearing includes notice that a denial can be appealed and how to appeal. Any notice provided by the Department must be calculated to actually apprise the claimant of his right to appeal and the deadlines therefor. For a claimant like Plaintiff, who does not read or understand English, adequate notice must be provided in a language he understands. Because the agency decision, dated January 31, 2004, was only in English, Plaintiff could not understand it and, consequently, could not understand that he had only fifteen days in which to file an appeal. Because the notice issued by the Department was not adequate, the Plaintiff was denied his right to a fair hearing, and this Court must reverse the decision of the Department. T.C.A. 50-7-304(i)(2)(A), (C).

21. Unemployment benefits are property rights within the meaning of the due process clause of the Fourteenth Amendment to the United States Constitution. Therefore, a claimant may not be denied such benefits without being afforded the protections of both the federal Constitution and the Constitution of the State of Tennessee. The Department's failure to provide Plaintiff with notice of his appeal rights and appeal deadlines in a language which he could understand constitutes a violation of Plaintiff's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and the Tennessee Constitution, Art. I, § 8.

22. A claimant's right to a fair hearing also includes the right to be represented by counsel. The Department has an obligation, both prior to the hearing and at the hearing, to adequately advise a claimant of the right to be represented. Even if the Department provided Plaintiff with a written statement of his right to be represented, that statement was in English—a language that he did not understand. Similarly, the appeals referee failed to advise Plaintiff, at the June 17, 2004, hearing, that he could be represented and that he might be able to obtain free assistance. Consequently, Plaintiff did not knowingly and voluntarily waive his right to be represented. The procedure used by the Department to deny unemployment compensation was, therefore, unlawful, and this Court must reverse the decision of the Department.

23. The Tennessee Department of Unemployment and Workforce Development, as a recipient of federal funds, is required to comply with the Title VI of the Civil Rights Act of 1964. Title VI states that “no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C § 2000d (2004). Further, the Department of Labor is governed by T.C.A. § 4-3-1412, which mirrors the Title VI requirements. Title VI and T.C.A. § 4-3-1412 require the Department, at a minimum, to ensure that non-English speaking claimants understand the application process and comprehend notices. They further require the Department to provide claimants an opportunity to be heard on the merits of their claim. In failing to provide notices in a language which Plaintiff understands, failing to provide interpreter services for such notices, failing to actually notify Plaintiff of his right to representation, and failing to provide a certified interpreter at hearings, the

Department effectively denied Plaintiff non-discriminatory processing of his claim for benefits in violation of Title VI of the Civil Rights Act of 1964 and T.C.A. § 4-3-1412.

24. The United States Department of Labor (hereinafter “USDOL”) regulations implementing Title VI prohibit the Tennessee Department of Labor from utilizing methods of administration which have the effect of subjecting individuals to discrimination on the basis of national origin, or which have the effect of defeating the objectives of Department programs as respects individuals of a particular national origin. 29 C.F.R. 31.3(b)(2) (2003). The USDOL regulations further specifically provide that the Tennessee Department of Labor must provide claimants with sufficient information to enable a claimant to understand the decision and his or her appeal rights. 20 C.F.R. 602 App A (2004). The actions of the Department in failing to provide Plaintiff with notices in a language he could understand clearly defeated the objectives of the program as to him due to his national origin. Additionally, the Department failed to provide Plaintiff with sufficient information to enable him to understand decisions issued by the Department or his appeal rights. These actions are a violation of the regulations promulgated by the United States Department of Labor pursuant to Title VI of the Civil Rights Act of 1964.

25. The failure of the Department to provide a trained interpreter at any of the three hearings scheduled for Plaintiff deprived him of his right to a “fair hearing” in contravention of the Fourteenth Amendment to the United States Constitution, the Tennessee Constitution, Art. I, § 8, and the statutory provisions of the Unemployment Compensation Program found at 42 U.S.C. 503(a)(3).

26. The administrative record fails to contain substantial and material evidence to support either the conclusion that Plaintiff did not have good cause for untimely filing an appeal, or the conclusion that Plaintiff voluntarily quit his job without good cause. As a result, the denial of benefits is erroneous as a matter of law and should be reversed. T.C.A. § 50-7-304(i)(2)(E).

WHEREFORE, premises considered, Plaintiff XXXXXXXXXX prays that the Court:

1. Order that Defendants be served with process and be required to answer;
2. Direct Commissioner Neely to file in this Court a complete transcript of the record as required by T.C.A. § 50-7-304(i)(1);
3. Following a hearing, reverse the decision of the Tennessee Department of Labor and Workforce Development that denied Plaintiff unemployment compensation benefits, or, in the alternative, remand the matter to the Board of Review for a new hearing;
4. Tax costs to Defendant Neely; and
5. Grant any other general relief that the Court deems proper.

Respectfully submitted,

Surety

I am surety for costs in this cause not to exceed \$500.00.
