

1 STATE OF WISCONSIN : CIRCUIT COURT : FOREST COUNTY

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3 ROBERT THORNTON,

4 Plaintiff,

81-CV-93
DECISION

5 -vs-

6 DEPARTMENT OF INDUSTRY,
7 LABOR and HUMAN RELATIONS,
8 and INDUSTRY REVIEW COMMISSION,
9 and U. S. DEPARTMENT OF
10 AGRICULTURE, NATIONAL FINANCE
11 CENTER,
12 Defendants.

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14 Partial transcript of proceedings held in
15 the above-entitled matter before the Hon. Frederick H. Fowle,
16 Circuit Judge for Forest County, at the Courthouse, in the
17 City of Crandon, Forest County, Wisconsin, on the 6th
18 day of July, 1983.

19 APPEARANCES

20 ROBERT A. KENNEDY, SR., Attorney at Law and
21 ROBERT A. KENNEDY, JR., Attorney at Law, appeared on behalf
22 of the Plaintiff.

23 MELVIN H. JARCHOW, Attorney at Law, appeared
24 on behalf of the Defendants.

25 PROCEEDINGS

THE COURT: Reiterating the Court's recollection
of the facts in this case, during the first five weeks of
unemployment which are at issue the wife of the claimant,

1 Mr. Thornton, was licensee and operator of a tavern in
2 the village of Laona, and that although the administrative
3 hearing has disposed of the matter of whether or not Mr.
4 Thornton actively sought work in that period, there's
5 nevertheless materials in the record that he did assist his
6 wife in housekeeping chores, et cetera, in running the
7 tavern. This factual situation is very easily distinguishable
8 from the case that the Court has in hand entitled Sue A.
9 Krueger, plaintiff, versus the Department of Labor and
10 Industry Review Commission and General Motors Assembly
11 Division, in that on the facts therein cited this lady was
12 actually making \$400 by gainful employment which she
13 indicated that she was not employed. And on page 5, the
14 Court goes into the following language: The Court is
15 completely satisfied that under the provisions of Section
16 108.04 (11), forfeiture of future benefits may not be
17 imposed against a claimant who makes an honest mistake.
18 It is quite apparent that a forfeiture is to be imposed
19 against a claimant only as a result of his or her wilfull
20 act of concealment, not due to ignorance, lack of knowledge.
21 Clearly there must be intent on the part of the claimant
22 to receive benefits to which he or she knows they are not
23 entitled. No question that this recitation is a sound
24 recitation, particularly sound in applying to the facts in
25 the Krueger case here where the woman actually was collecting

1 \$400 a week. This is not the case as this Court finds in the
2 activities engaged in by Mr. Thornton which were in the
3 nature of an accommodation to his wife in the operation of
4 her business. Secondly, in reviewing the briefs and the
5 arguments here, the attempt to reserve the matter of litigating
6 concealment which was made by the commission with reference
7 to the first five weeks was subsequently pursued by applying
8 a different standard than was applied to the balance of
9 the seventeen weeks previously at issue.

10 The basic facts are found not to constitute
11 a grounds for reasonable inference that Mr. Thornton
12 intentionally concealed any facts relative to working. And
13 again returning to page five of the Krueger decision,
14 repeating the language that's therein set forth: The Court
15 is completely satisfied under the provisions of 108.04 (11),
16 statutes, forfeiture of future benefits may not be imposed
17 against a claimant who makes an honest mistake and this
18 Court will find that if the accommodation and services that
19 were offered by Mr. Thornton to his wife in the operation
20 of the tavern did in fact constitute employment, reading the
21 question that was posed to him in his application did he do
22 any work and answering the same no, constitutes a reasonable
23 and honest mistake because in reading the language work,
24 a man who's used to operating heavy equipment is not going
25 to consider housekeeping duties as work. He is going to

