

IN THE SUPERIOR COURT FOR THE COUNTY OF FULTON
STATE OF GEORGIA

SULATHA BLOUNT, KRISTA EMILIEN *
LISA ENGLISH, DANIELLE *
ROBITSHEK, HARRIET ROGER, and *
KRISTY TOWNLEY, *

Petitioners. *

v. *

MARK BUTLER, individually, and in *
his official capacity as Commissioner of the *
Georgia Department of Labor, and the *
GEORGIA DEPARTMENT OF LABOR, *

Respondent. *

CIVIL ACTION NUMBER

VERIFIED PETITION FOR A WRIT OF MANDAMUS

1. Petitioners Sulatha Blount, Krista Emilien, Lisa English, Danielle Robitshek,
Harriet R,

they have been deemed eligible to have their appeals adjudicated by an administrative hearing

Although GDOL stated in December 2020 that there are no longer back logs in processing claims for those who are initially considered eligible, GDOL Commissioner Mark Butler admitted that the number of claims still waiting to be adjudicated is “probably anywhere between 40,000 50,000.”⁴

5. Respondents’ delays in making determinations, paying benefits, and applying hearings cause uncertainty about the receipt of benefits for Petitioners and countless other Georgians. Petitioners Kristy Townley, Harriet Rogers, Krista Emiliere and Lisa English applied for unemployment benefits but have been waiting from four to nine months for Respondents to determine their eligib

18. Respondent GDOL is the department charged with administering Georgia's unemployment compensation program.

FACTUAL BACKGROUND

Unemployment Insurance Compensation at the Federal level and in the State of Georgia

19. Created in 1935 during the Great Depression, unemployment insurance is a joint federal-state system, overseen by the federal government and operated by the states, that provides cash benefits to qualifying individuals to limit immediate hardship experienced from the loss of employment and in turn, to stabilize the economy by shoring up workers' purchasing power during economic downturns⁶

20. Unemployment insurance provides payments to states to finance the administration of their unemployment insurance compensation laws. 42 U.S.C. §§ 501-

21. Georgia is eligible to receive unemployment insurance payments from the federal government if it meets certain federal requirements, including that its law has a provision for "such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." 42 U.S.C. § 503(a)(1) (emphasis added).

22. This section of the Social Security Act is known as the "when due" provision. The federal regulation interpreting the "when due" provision requires that Georgia employment compensation laws provide for "such methods of administration as will reasonably ensure the full payment of unemployment benefits to eligible claimants with the greatest promptness that is administratively feasible" 20 C.F.R. § 640.3(a).

⁶ Chad Stone & William Chen, Center for Budget & Policy Priorities, Introduction to Unemployment Insurance (2020), <http://bit.ly/38MFU5Q>

28. Prompt determinations and payments

36. A claimant will be issued payment within 248 hours after a claims examiner determines that the claimant is eligible for benefits.

37. If a claimant receives an unfavorable decision from the claims examiner, the claimant must file an appeal with the Appeals Tribunal within 15 days of issuance of the decision.

O.C.G.A. § 34-8-220. Appeal hearings challenging the initial determination shall be held by the Appeals Tribunal within 37 days of the date of the initial determination.

adjudicate claims, have led to a backlog of pending claims requiring Respondents' prompt action. See Dibble Aff. ¶¶ 11-13.¹⁴

41. In early September 2020, Respondent Butler himself even acknowledged 58,698 unemployment compensation appeals were pending, one of GDOL's biggest concerns and a number that has likely remained high since

42. More recently, Respondent Butler acknowledged a backlog of 45,000 applications awaiting processing and a determination of eligibility

43. Without necessary unemployment insurance benefits, countless Georgians cannot pay for housing, utilities, food, or medical care, leaving them in financially devastating situations. Thus, the level of urgency among underemployed and long unemployed Georgians, who are unable to support themselves and their families, remains high. Dibble Aff. ¶ 7, see Huber Aff. ¶¶ 6-8.¹⁷

44. Indeed, a brief scan of GDOL's own social media pages reveals innumerable posts—from March 2020 to December 2020—highlighting the extent of GDOL's inaccessibility and its severe delays in determining eligibility, paying benefits, and scheduling appeal hearings:

x “I've been waiting since Oct 2 and my claim is still pending eligibility (b) (6) (b) (7) (C) (b) (7) (D) 10/28/2020”

you can absolutely forget anyone calling you back I cant even tell yall how many times I have left messages and sent emails to gdol. I dont know what else to do at this point . And I've w~~or~~ed my whole life to just be screwed basically. I guess all of the money I have paid in does us no good.”

49. Petitioner Blount has been certifying her claims weekly through the GDOL online portal, but she has not received any payments.

50. Petitioner Blount went to the GDOL career center in Macon, Georgia, to try to talk to a GDOL representative about her benefits, but the career center was closed to the public. She also repeatedly called the career center, but she was never able to speak to anyone.

51. In August 2020, someone from GDOL contacted Petitioner Blount because the identification card she had provided had expired. Petitioner Blount provided an unexpired ID card, and she called the telephone number back but was not able to reach anyone.

52. In October 2020, after her unsuccessful attempts to contact GDOL, Petitioner Blount retained legal counsel to contact GDOL on her behalf to find out why her benefits were not being paid.

53. Without her usual self-employment income and absent payment of benefits, Petitioner Blount has struggled to pay rent and utilities. She has had to request assistance from her church and family, and she still struggles to pay her monthly bills.

54. Petitioner Lisa English is a 36-year-old resident of Rockdale County, Georgia.

55. She was temporarily laid off from her job as a 1099 employee at an outdoor recreation store in March 2020 due to the pandemic.

56. Petitioner English filed an application for unemployment benefits on March 23, 2020.

57. On April 23, 2020, a Field Tax Agent with the GDO reached out to Petitioner English to gather more information, which she provided.

58. After reaching out to the GDOL several times for an update, Petitioner English never received a benefit determination letter, never received a claims examiner's decision, never had a benefit eligibility review, and never received a link to apply for PUA.

59. Petitioner English was out of work for 8 weeks before her employer reopened and brought her back to work—this time as a W2 employee.

60. Petitioner English was fired and filed a new application for unemployment benefits in October 2020.

61. It has now been nine months since Petitioner English filed her initial application and she has never received any communication from GDOL regarding her claim.

62. Petitioner English has had to heavily depend on family and friends for financial support to pay her bills during this difficult time. She moved from her apartment in Fulton County to a shared apartment in Rockdale County because she could no longer afford her rent. She is unsure if she can make upcoming rent payments and may have to move into her parents' camper. Her son lives in Florida with his father and usually comes to Georgia in the summers to stay with Petitioner English. But this year, she was unable to financially provide for her son, so he had to stay in Florida.

63. Petitioner Kristy Townley is a 41-year-old woman who lives in Barrow County, Georgia.

64. When the restaurant that Petitioner Townley managed for two years closed in March 2020 due to the pandemic, her employer filed for unemployment benefits on her behalf.

65. GDOL found Petitioner Townley eligible for \$277.00 in weekly benefits for 26 weeks, beginning March 15, 2020.

74.

91. Despite the written protocol, the employee continued to allow customers to enter and wait inside the salon.

92. Petitioner Robitshek and other employees spoke to the employer about their discomfort with customers entering the salon but the situation did not improve

93. When another customer came inside, Petitioner Robitshek asked the customer to wait outside. The employer yelled at Petitioner Robitshek, and she stepped outside to take a break.

94. Petitioner Robitshek felt uncomfortable going back inside the store after being yelled at and having safety protocols disregarded. She told the employer she would take the rest of the day off. Petitioner Robitshek told her employer she would return to work when it felt safe. The employer terminated her in June 2020.

95. In June 2020, Petitioner Robitshek filed a claim for unemployment benefits. Benefits were initially denied. She filed an appeal on September 12, 2020, but no administrative hearing has been scheduled. When Petitioner's legal representative contacted GDOL in, a GDOL legal department staff member responded that they could not say when Petitioner's Robitshek's appeal would be heard and that only appeals filed at the beginning of May 2020 were currently being scheduled for hearings.

96. Petitioner Robitshek has spent her savings and if not for a family member's help, she believes that she would now be homeless. She worries about every cent that she spends and about her ability to pay her bills. She has no income currently and must wait indefinitely for an appeal hearing.

CAUSE OF ACTION
Writ of Mandamus against Respondents
O.C.G.A. § 96-20

97. Petitioners incorporate all the preceding paragraphs by reference.

98. Georgia law provides that “[a]ll official duties should be faithfully performed, and whenever, from any cause, a defect of legal justice would ensue from a failure to perform, . . . the writ of mandamus may issue to compel a due performance” of an official duty ~~w~~O.C.G.A. § 9-6-20.

99. Here, Petitioners Townley, Rogers, Emilien and English have a clear legal right to receive prompt determination of their eligibility ~~by~~ the GDOL. O.C.G.A. § 34-8-192(a).

100. Petitioner Blount has a clear legal right to receive prompt payment of unemployment compensation benefits for which the GDOL has found ~~her~~ eligible. O.C.G.A. § 34-8-192(d).

101. Petitioner Robitshek has a clear legal right to prompt scheduling of a hearing in her requested appeal. Ga. Comp. R. & Regs. 305-02(2)(a).

102. Respondents thus have corresponding clear legal duties to timely determine Petitioners Townley, Rogers, Emilien and English’s eligibility, ~~pay~~ Petitioner Blount due unemployment compensation benefits, and schedule Petitioner Robitshek’s requested administrative appeal hearing. ~~O.C.G.A. § 34-8-192(a),(d); Ga. Comp. R. & Regs. 3002-5-.02(2)(a)~~ O.C.G.A. § 34-8-192(a),(d); Ga. Comp. R. & Regs. 3002-5-.02(2)(a)

103. Respondents, however, have failed to faithfully perform ~~the~~ promptness duties in their administration of Georgia’s Employment Security Act, O.C.G.A. 34-8-1 et seq, and its related regulations.

104. As a result of Respondents’ failures, Petitioners have suffered catastrophic ~~physical~~ harm from the unlawful delays in the processing of their applications and determination of eligibility, payment of their unemployment claims ~~and~~ scheduling of the requested administrative appeal hearing.

105. Thus, a writ of mandamus is warranted to compel Respondents to perform their “promptness” duties in connection with Petitioners’ unemployment insurance claims

106. Petitioners have “no other specific legal remedy” for Respondents’ “failure to perform” their public duty than to request that a writ of mandamus be issued. O.C.G.A. § 9-

107. An administrative appeal is unavailable to Petitioners Townley, Rogers, Emilien and English who have applied but have not received a ~~decision~~ determination of eligibility, Petitioner Blount who is owed benefits but has not been paid, and Petitioner Robitshek who has not been scheduled for the appeal hearing he requested months ago.

108. Moreover, Petitioners cannot and do not seek damages. Nor do they seek a specific outcome on their applications.

109. Rather, Petitioners simply seek to compel Respondents to do what they are

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