

2008

# Mary Seager v. Department of Workforce Services, Workforce Appeals Board, Bear River Health Department : Brief of Petitioner

Utah Court of Appeals

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Respondents; Michael R. Medley; Attorney for Respondent Workforce Appeals Board; Personnel Department.

Petitioner; Mary Seager.

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Petitioner, Mary Seager

vs.

Respondents, Department of Workforce  
Services, Workforce Appeals Board, and  
Bear River Health Department

In the Utah Court of Appeals

Appellate Court Docket #20080820

Brief of the Petitioner

Petition for Review of a Final Judgment of  
The Department of Workforce Services Appeals Board

Respondents,

Michael R. Medley  
Attorney for Respondent  
Workforce Appeals Board  
Department of Workforce Services  
P.O. Box 45244  
Salt Lake City, UT 84145-0244

Personnel Department  
Bear River Health Department  
655 E. 1300 N.  
Logan, UT 84321-2571

Petitioner,

Mary Seager  
462 W. 200 N. #3  
Logan, UT 84321

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**Jurisdiction:** The Utah Court of Appeals has jurisdiction pursuant to Utah Code Ann. §78A-4-103(2)(a).

**Statement of the issue:** I established good cause with the Department of Workforce Services for leaving my place of employment by showing that staying on would have created sufficient hardship to make it necessary for me to quit or that I had no reasonable alternative to quitting. Neither the administrative law judge nor the Workforce Appeals Board addressed that issue.

**Determinative constitutional provisions, statutes, ordinances, and rules:**

(Utah Administrative Code R994-405)

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to control or prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

- (i) reasonably could have continued working while looking for other employment,
- (ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,
- (iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

**Statement of the case:**

The initial denial of my unemployment claim by the Department of Workforce Services on May 29, 2008 was based on the caseworker's perception that I voluntarily left my place of employment and that I did not establish good cause for leaving by showing that staying on would have created sufficient hardship to make it necessary for me to quit or that I had no reasonable alternative to quitting (pg. 19 of record index #08-R-00433).

Based on the findings of fact from the June 26, 2008 telephone hearing, Judge McPeck reversed that decision. She concluded that the employer was the moving party in my termination and that the employer was also unreasonable in not allowing me to stay on until I had sufficient time to meet with my physician (pg. 92 of record index #08-R-00433). I had hoped to

attempt to remedy the effects of a bone condition which made it extremely difficult for me to lead the 4-hour blocks of group therapy which had been assigned within 2 weeks prior to my termination.

A subsequent decision of the Workforce Appeals Board reversed the decision of Judge McPeck. The board concluded that I was the moving party in my termination and that the employer was reasonable in refusing to allow me to remain employed long enough to meet with my physician and to attempt to remedy my pain and fatigue (pg. 107 of record index #08-R-00433).

Regardless of whom the moving party was in the termination of my employment or of whether or not the employer was reasonable in refusing to allow me to continue to work until I had met with my physician, one point still remains unaddressed by both the judge as well as the appeals board. That is the statement of the Department of Workforce Services' caseworker that I did not establish good cause for leaving by showing that staying on would have created sufficient hardship to make it necessary for me to quit or that I had no reasonable alternative to quitting.

I provided a letter from my primary-care physician for the telephone hearing with the administrative law judge to the effect that leading the 4-hour blocks of group therapy was beyond my physical ability and, therefore,

an undue hardship in light of my health condition (pg. 24 of record index 08-R-00433). Without a reasonable accommodation from the employer or an opportunity to further address my health needs with my physician, I had no reasonable alternative but to leave my place of employment. In an April 29<sup>th</sup> phone conversation I had with the Deputy Director of the agency I worked for, I asked if an accommodation could be made in regard to leading the groups. He informed me it could not. I was also presented with a termination letter the following day in lieu of being allowed to remain employed while undergoing health treatments.

**Relevant facts, summary, and detail:**

The employer has indicated that it is their perception that I was the moving party in my job termination and that, if I had not been, they would have had every right to fire me. It seems that I am in a no-win situation in regard to my unemployment claim within that particular set of parameters. However, by far the majority of my employer's complaints about my job performance were waged against me after I had expressed a need for accommodation at a particular job site in the Bear Lake area.

I had traveled through Logan Canyon to Bear Lake every Friday as part of my employment with the health department. I very much enjoyed that aspect of my job. As a matter of fact, it was by far my favorite work



responsibility, and I had successfully carried it out for about 2 ½ months.

However, the location for that job assignment changed from a well-trafficked health clinic to a remote location above a real-estate office around the beginning of April of 2008. I was told that I would recognize the new location when I got there due to the “steep flight of stairs” on the outside of the building by which I would gain access to our office. I was also told to “throw a couple of chairs in the back of the van” and take them to my new work location. In addition, I had a heavy television monitor which needed to be transported to and from the Bear Lake location on a weekly basis.

Having been concerned about my potential inability to carry the heavy office furnishings, equipment, and supplies up the stairs due to my slight build and a prior knee injury (pg. 23 of record index 08-R-00433), my husband offered to take an unpaid day away from his own workplace and to follow me to Bear Lake in our family car so that he could assist with the lifting and the climbing. Upon our arrival at the location, it also became apparent that I was the only one conducting business that day on the upper floor of that building and that I was to be placed in the somewhat precarious position of being left alone to provide treatment services for a set of male offenders, none of whom I felt especially endangered by. However, as noted by Dr. Wentz, the onsite psychologist at the health department, such a situation

presented not only a safety issue for myself but also a liability issue for the agency should any of the clients choose to accuse me of improper conduct as no one else would be there to affirm otherwise.

In light of those concerns, I chose to speak with Brock Alder, the head of my department, and Todd Barson, the deputy director at the agency, and to request the accommodation of having my husband accompany me on a weekly basis to the Bear Lake location. That would ensure my safety as well as the propriety of my interactions with my clients. In addition, my husband could assist with any lifting that was required as well as my ascent up the stairs if necessary. As a point of information, I would like to indicate that my husband has worked professionally at a mental-health institution for 3 years in the past in the provision of security services. However, neither Mr. Alder nor Mr. Barson looked favorably upon my suggested solution to my concerns about my new worksite.

The following week, I returned to the Bear Lake area and that time was accompanied by a clerical person from the agency. While there, I had occasion to meet the woman who was the head of the home-healthcare office that was located directly adjacent to our office. I took the opportunity to inquire as to whether or not she could ensure that someone from her office would be onsite while I worked there with my clientele. She told me she

was willing to bring up my inquiry in her next staff meeting and encouraged me to get back with her. However, upon relaying that information to Mr. Alder and Mr. Barson, I was told that I had stepped out of bounds in speaking with the director of the home-healthcare agency and that it had been determined that a male therapist would take my place in Bear Lake.

I did not, as indicated by both Judge McPeck and the Workforce Appeals Board, request to be returned to the Bear Lake office after my job responsibilities had been reassigned. That was a mistaken inference on the part of the judge, which I failed to correct upon receiving her favorable judgment regarding my unemployment claim. I assume that what the employer suggested and what the appeals board inferred as a history of vacillation on my part was based at least in part on that mistaken inference. As I have indicated, I tried very hard to maintain my work assignment in Bear Lake.

Part of the reason I tried so hard to keep the Bear Lake assignment was that I was even more concerned about the new job responsibilities that were to be assigned to me. I was to conduct a weekly, 4-hour, therapy session with a quickly transitioning group of substance-abuse clients who had been court-ordered into our intensive-outpatient-treatment program (IOP). I was also to fill in approximately monthly for a 4-hour block of group therapy

sessions at the jail. Having had a previous opportunity to lead the 4-hour block of IOP while filling in for another therapist who was away on training, I realized how very fatiguing that assignment would be to me. I was diagnosed with a bone condition in my left ribcage in September of 2007 and have experienced ongoing pain and fatigue since that time. Leading the 4-hour block of group therapy required a great deal of physical and mental energy to keep the group on task and moving in the right direction. I even had to play referee with a couple of male clients who seemed to be vying with one another for a leadership position in the group. I am afraid I realized at the time I substituted for the other therapist that I didn't have the stamina to run the 4-hour group without a co-leader as I was relatively nonfunctional at home for several days thereafter. I leaned a great deal upon my husband for cleaning, shopping, and meal preparation at that time.

While I did accept the new assignments (4-hour blocks of group therapy) and carried them out for a couple of weeks, my prior suspicion that they would be too much for me was confirmed, and I called to speak with Mr. Barson about that on the morning of April 29<sup>th</sup>. It was not my intention to terminate my employment at that time but merely to request an accommodation. I had just spoken with an adjudicator at the Department of Workforce Services (most likely a man by the name of Kyle) about the

benefits of requesting an accommodation versus quitting. Mr. Barson indicated that no accommodation could be made on my behalf, especially in light of the fact that an accommodation had already been made in regard to the Bear Lake assignment, and encouraged me to accept a termination date at the end of the week, a date which he, himself, verbalized. I was a bit shocked and disappointed at Mr. Barson's suggestion. I did not even have an opportunity to brainstorm with him some possible accommodations that may have worked to meet my needs as well as those of the agency.

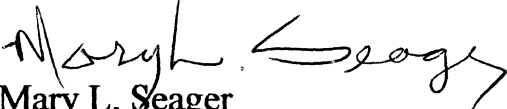
The appeals board suggested that I was not diagnosed with my bone condition until May, a month after my separation from the health department, but that I should have had plenty of time to correct my condition before leaving my place of employment at the end of April (pgs. 106 and 107 of record index #08-R-00433). Therein is an apparent contradiction in the suggested timing of the appeals board. I have provided along with my docketing statement a copy of a consultation report from my thoracic specialist at McKay Dee Hospital in Ogden, which speaks to the contrary. I was diagnosed with my bone condition in September of 2007, only a surgery would have fully corrected my condition, and I had no opportunity to take the necessary, paid leave from work until after my probationary period ended in July. I was afforded neither an accommodation nor the time

necessary to resolve my healthcare needs. In addition, no time was granted for me to meet with my primary-care physician to determine if anything could be done to alleviate my symptoms while awaiting surgery. It wasn't until May that I was even able to see him due to his busy work schedule.

**Conclusion:**

I am requesting that the Appeals Court reinstate my unemployment benefits based on the fact that staying at the health department would have been an undue burden for me without having a proper accommodation for my health needs or without at least being given a chance to meet with my physician to possibly alleviate my symptoms while awaiting surgery. As noted, running the groups for 2 weeks confirmed my suspicion that I lacked the stamina to do so. However, those 2 weeks were an insufficient timeframe in which to schedule and maintain an appointment with my local physician and to get underway with a treatment program of any kind, as the appeals board suggested I should have been able to do.

**No addendum is required.**

  
Mary L. Seager  
Petitioner