

2008

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

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

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

Petitioner; Mary Seager.

Recommended Citation

Reply Brief, *Mary Seager v. Department of Workforce Services, Workforce Appeals Board, Bear River Health Department*, No. 20080820 (Utah Court of Appeals, 2008).

https://digitalcommons.law.byu.edu/byu_ca3/1199

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

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

Reply to the Respondents' Brief

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

FILED
UTAH APPELLATE COURTS
FEB 02 2009

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

Reply to the Respondents' Brief

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

Table of Contents

Jurisdiction	pg. 3
Statement of the issue	pg. 3
Determinative constitutional provisions, statutes, ordinances, and rules	pg. 3
Statement of the case	pg. 4
Relevant facts, summary, and detail	pg. 5
Conclusion	pg. 9

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.

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, Administrative Law Judge Amanda McPeck reversed that decision. She concluded that the employer was the moving party in my termination and that none of the factors of just cause had been met in regard to my dismissal (pp. 92, 93, & 94 of record index #08-R-00433).

A subsequent decision of the Workforce Appeals Board reversed the decision of Judge McPeck and supported the initial decision of the caseworker (pg. 107 of record index #08-R-00433).

In reply to the respondents' brief, I would like to point out a number of inaccuracies that are apparent in their statement of the facts and support for their arguments. Those are as follows; 1) that my physical limitations were the primary reason for my reassignment from the Bear Lake location, 2) that I asked to be assigned back to that location after being reassigned other job responsibilities, 3) that I verbalized not being a good fit for the agency and wanting to terminate my employment in a telephone conversation with Todd Barson, the deputy director of Bear River Health Department (BRHD), the day before my termination 4) that I was the moving party in my termination; 5) that I did not show good cause for leaving my place of employment; and 6) that I did not attempt to explore other options prior to being terminated.

Relevant facts, summary, and detail:

The Workforce Appeals Board has indicated in their brief that I was physically unable to climb the stairs at my assigned worksite in Bear Lake and that I was, therefore, reassigned to the 4-hour blocks of group therapy in the Logan office and at the jail. That was not the main reason for my

reassignment. For 3 months I had successfully fulfilled my work responsibilities with the Bear Lake clientele, either at a health clinic in Garden City, which was well-trafficked by other healthcare professionals, or at my office location in Logan. It was only within the last 2 weeks of my employment with BRHD that my employer chose to relocate to a new Garden City office location. The new location was a small, isolated office which was located above a real estate agency and which was only accessible by a steep and narrow stairway on the outside of the building. My primary concern about the new office location was that I was to be left entirely alone on the upper floor of that building with my clients, who were all convicted male substance offenders (pp. 12 & 58 of record index #08-R-00433). Even the onsite psychologist at the health department, Dr. Trent Wentz, referred to that situation as being not only a safety issue for me but also a liability issue for my employer. My secondary concern was that I discovered that attempting to climb those steep and narrow stairs aggravated a prior knee condition (pp. 12 & 58 of record index #08-R-00433). My first suggested solution to the problem, for my husband to be allowed to follow me to Bear Lake, assist me up the stairs, and sit in the conference room while I met with my clients, was disallowed by my supervisor, Mr. Brock Alder. However, a signed consent form from the clients would have made that situation quite

feasible. Another potential solution that I thought of was to contact the owner of a home-healthcare business that utilized an office located directly adjacent to mine and to request that she allow me to coordinate my schedule with hers so that perhaps a member of her staff could be present in her office while I met with my clients. Mr. Alder and Mr. Barson also disallowed that suggestion. Their solution was to reassign me.

The Workforce Appeals Board has also reiterated a mistaken inference that I asked to be assigned back to Bear Lake following my reassignment to the 4-hour blocks of group. That was never the case. When I began teaching the groups, Tracy Sorensen, a male therapist, started seeing my former clients in Bear Lake. I made no request to be removed from the Bear Lake assignment and subsequently made no request to be reassigned.

The Workforce Appeals Board also indicated that Mr. Barson asked on the day before my discharge if I still felt I was not a good fit for the agency and if I wanted to terminate my employment. In his own testimony before Judge McPeck, Mr. Barson indicated not having asked but having told me those things and even having suggested a specific termination date (pp. 55, 56, & 61 of record index #08-R-00433). Judge McPeck rightly determined that made him the moving party in my termination (pp. 92, 93, & 94 of record index #08-R-00433). She also determined he had insufficient

cause for discharging me based on Mr. Alder's testimony that none of his complaints against me were of sufficient severity for termination and that no corrective action had been taken (pg. 69 of record index #08-R-00433).

The Workforce Appeals Board stated it was my decision to terminate my employment. I only agreed to the termination date of May 2nd because no accommodation was offered in response to my inquiry in regard to the 4-hour blocks of group therapy to which I was assigned after being removed from the Bear Lake assignment. Those groups were too fatiguing for me to conduct on my own in light of a bone condition that I was diagnosed with in September of 2007. While I have experienced pain and fatigue related to my condition since the time of my diagnosis, it was only within the last 2 weeks of my employment with BRHD that I was assigned a task that was beyond my ability to perform.

The Workforce Appeals Board has suggested that I failed to show good cause for quitting because I subsequently asked to remain employed long enough to meet with my physician to see if something could be done to remedy my pain and fatigue. I was only trying to attempt, as any reasonable person would, to salvage my work opportunity. I truly hoped that something might be done to make that possible. However, I would have had to meet with my physician immediately in order to develop a solution to my pain and

fatigue, and the employer made that impossible. Nor did I have paid medical leave that could be taken before mid-July.

The Workforce Appeals Board also mentioned that I did not choose to explore other options besides termination prior to leaving my place of employment. That is untrue. I was in the very act of asking to explore some potential accommodations when Mr. Barson requested my resignation and suggested that I work my last day on May 2nd. As I have mentioned before, I was told that no accommodation could be afforded due to the nature of my job. However, it was the employer who changed the nature of my job, and I knew of at least four other therapists on my team who were not leading the 4-hour blocks of group during my tenure at BRHD. Any one of them could have traded work assignments with me or perhaps could have co-led my groups with me in order to allow me an occasional respite during our session time together. I know I was not the only therapist to desire such an arrangement.

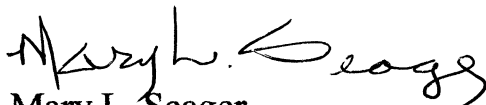
Conclusion:

I am again requesting that my unemployment benefits be reinstated for the weeks during which I submitted my weekly claims. I am basing my request on the errors inherent in the respondents' statement of facts and expressed arguments. In addition, it was in no way unreasonable or

infeasible for my employer to have offered an accommodation for either the Bear Lake assignment or the 4-hour blocks of group. As stated, I never asked to be removed from Bear Lake and developed multiple solutions in an attempt to stay. I was equally willing to brainstorm options for the groups. Finally, the appeals board, while having much authority in matters pertaining to the law, does not have the expertise to comment on my medical condition or to overlook the opinion of my physician. I would also like to remind the court that no complaints about my job performance were brought to my attention prior to a couple of weeks before my termination (most of them only 2 days before) and that I expressed a willingness to address those.

No addendum is required.

Thank you for your consideration of my unemployment claim.


Mary L. Seager
Petitioner