

1986

# Sandra S. Covington v. Board of Review of the Industrial Commission of Utah and Department of Employment Security : Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

SANDRA S. COVINGTON,  
Claimant/Petitioner

vs.

BOARD OF REVIEW OF THE  
INDUSTRIAL COMMISSION OF  
UTAH and DEPARTMENT OF  
EMPLOYMENT SECURITY,

Respondents.

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Case No. 21039

Category 6

REPLY BRIEF OF CLAIMANT/PETITIONER

PETITION FOR REVIEW OF A FINAL DECISION OF THE BOARD  
OF REVIEW OF THE INDUSTRIAL COMMISSION OF UTAH,  
DEPARTMENT OF EMPLOYMENT SECURITY, DATED NOVEMBER 19, 1985

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DOCKET NO. 198621039

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FILED

JUL 29 1986

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LIST OF PARTIES

Claimant-Petitioner

Sandra S. Covington

Respondents

Board of Review of the  
Industrial Commission  
of Utah

Utah Department of  
Employment Security

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## ARGUMENT

### I. Respondent Cites Legal Authority That Is Both Unpersuasive And Outdated.

In their brief Respondent argues that the Claimant is not entitled to unemployment benefits under either the "good cause" standard or the "equity and good conscience" standard. They argue that the Claimant quit without good cause because she did not give her new assignment a fair trial, and that her stock ownership in the employer company imposes a greater duty on the Claimant not to abandon that employment. The cases cited by the Respondent in support of this argument are not persuasive.

Also, nowhere in the Rules and Regulations is there language suggesting that employees who own stock in their company should be held to a higher standard, and the Respondent fails to cite any legal authority in support of this argument.

### II. Claimant's Financial Insecurity and Change in Working Conditions Constituted Good Cause for Quitting.

The instant case is readily distinguishable from United Steelworkers v. Department of Employment Security, 16 Utah 2d 72, 395 P.2d 837 (1964) upon which the Respondent relies, because United Steelworkers did not involve the issue of whether the proffered employment was suitable by reason of the Claimant's skill, training and experience, but merely involved the issue of whether it constituted good cause to refuse employment at substantially reduced wages. Here, the record shows that both the Claimant's salary and her job duties were to be substantially altered were she to take the new job assignment (R. 8, 15).

The Respondent cites Andala Company v. Ganus, 115 S.2d 123 (Ala. 1959), Kaylock v. Unemployment Compensation Board of Review, 67 A.2d 801 (Pa. 1949) and Sturzebecker v. Unemployment Compensation Board of Review, 188 A.2d 782 (Pa. 1963) for the proposition that a worker could be denied unemployment benefits for a failure to meet the "good cause" standard when refusing to give a new system or assignment a trial period. In Andela, the facts established that the worker would be earning about the same amount under the new system, and her actual duties and skills remained essentially unaffected. The Claimant in the instant case faced a substantial reduction in wages (R. 37, 38) and would have been performing a job in which she had limited experience and few skills (R. 31, 34, 41, 42). In Kaylock, the court found that the Claimant's wages would have been approximately the same under the new plan as those paid under the old method. Since the Claimant would not have suffered a substantial reduction in wages, the Court held that he should have given the new plan a trial period. In Sturzebecker, the court found that the Claimant should have given the new assignment a fair trial, especially because the record showed a possibility of a greater income in the new position. In the present case, the record supports the fact that the Claimant faced a high likelihood that her salary would be severely reduced (R. 37, 38) from two thousand dollars per month to two hundred fifty dollars per month.



III. Claimant's Inability to Work Out Her Problems With Bryce Constituted Additional Good Cause To Quit.

The Respondent relies on Uniweld Products, Inc. v. Industrial Relations Commission, 277 S.2d 827 (Fla. 1973) and Citizen Bank of Shelbyville v. Industrial Commission of Missouri 428 S.W. 2d 895 (Mo. 1968) for cases upholding denial of unemployment benefits when the Claimants quit due to personality conflicts on the job. In the present case, the Claimant does not deny that the situation at work was "very tense" and that there were "communication problems" between Bryce and herself (R. 44, 47). But the record supports the fact that the Claimant made several attempts to reconcile these concerns in a reasonable manner (R. 31-34, 36, 37) and that the continuing hostility between the two made any resolution futile. The Respondent contends that the Claimant could have "walked out" of the August 5, 1985 final staff meeting rather than quit (Respondent's brief, p. 28), and that the Claimant had several other alternatives available to her. The Claimant did not "walk out" simply because of the argument during the staff meeting. The record shows that the company had been failing as early as May, 1985 (R. 31, 42), and the Claimant's actions in quitting were a result of a prolonged situation of unsuccessful attempts to correct both the company's decline and the personality problems existing between the Claimant and Bryce. The Respondent's argument that the Claimant was overly sensitive and unreasonable in quitting--is not an accurate characterization of the events surrounding her resignation, nor is this argument supported by the record.

IV. The Board Applied a Standard of Conduct to Claimant Higher Than That Used in Determining Benefits for Other Claimants.

The Board of Review determined that one of the important factors to be considered in this particular case was the fact that the Claimant was an officer/vice-president, a member of the Board of Directors, and a stockholder in the employer corporation (R. 0014). The Board determined that these factors amounted to a "proprietary interest" giving rise to a duty beyond that of a normal employee. The Board thus held the Claimant to a higher than average standard because of her interest in the company. Rule A71-07-1:15 (I)(C)(2)(b) states that "good cause" and "equity and good conscience" are to be measured in terms of "reasonableness." "The actions which might be acceptable for a member of a subculture are not the norm by which reasonableness is established" (emphasis added.) If the Board of Review's analysis were to be followed, then any employee who participated in an employee stock ownership plan or otherwise happened to own stock in the employer company--would be unfairly held to a higher standard than employees who didn't own stock. The result would be unequal treatment of similarly situated Claimants, and the Claimant in the instant case should not be penalized simply because she had an interest in the company.

V. Conclusion

As the ALJ and the dissenting member of the Board of Review pointed out, the Claimant demonstrated good cause for leaving (R. 0015). The ALJ found that the Claimant had left work with good cause because of the deteriorating financial

situation of the company, the fact that the Claimant's salary would be substantially reduced for a time, the communication barriers and the inability of the parties to remedy the situation (R. 26). The dissenting member of the Board of Review noted that:

The Claimant's salary would have been substantially reduced and it was not certain when or if the Claimant's income would reach its prior level. The company president proposed to take from the Claimant the clients she had been working with and assign her to work with new clients with whom she was not familiar. The Claimant had previously been assigned nonsales administrative work and felt at a disadvantage in competing with other employees who had been involved completely in sales work. (R. 8, 15).

For the foregoing reasons, Claimant asks that this Court reverse the decision below and enter its judgment that she is eligible for unemployment compensation benefits.

DATED this 29 day of July, 1986.

UTAH LEGAL SERVICES, INC.  
Attorneys for Claimant-Petitioner

Wayne Riches *by [Signature]*  
BY: WAINE RICHES

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed four copies of the foregoing REPLY BRIEF to Winston M. Faux, Counsel for Respondent, at 1234 South Main Street, Salt Lake City, Utah 84147, postage prepaid, this 29 day of July, 1986.

Mary Kieritz