1981

Doyle Max Wilson v. The Industrial Commission of Utah Dept. of Employment Security : Defendant's Brief

Utah Supreme Court

TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS (ctd.)

STATUTES CITED

IN THE SUPREME COURT OF THE STATE OF UTAH

DOYLE MAX WILSON,

Plaintiff-Appellant,

vs.

Case No. 17596

THE BOARD OF REVIEW OF
THE INDUSTRIAL COMMISSION OF UTAH,

Defendant-Respondent.

DEFENDANT'S BRIEF

STATEMENT OF NATURE OF THE CASE

This is an action before the Supreme Court of the State of Utah pursuant to Section 35-4-10(i), Utah Code Annotated 1953, as amended, seeking judicial review of a decision of the Board of Review of the Industrial Commission of Utah, which denied Plaintiff unemployment compensation for a period of six weeks.

DISPOSITION BELOW

A Department Representative denied unemployment benefits to Plaintiff/Appellant (hereinafter referred to as "claimant"), and claimant appealed. After due notice and hearing, an Appeal Referee for the Industrial Commission affirmed the Department's denial of benefits by decision dated December 30, 1980. The decision of the Appeal Referee was affirmed by the Board of Review by decision in Case No. 80-A-4579, 81-BR-19, dated February 24, 1981, and issued February 27, 1981.

RELIEF SOUGHT ON REVIEW

Plaintiff seeks reversal of the decision of the Board of Review and the Appeal Referee. Defendant seeks affirmance of such decision.

STATEMENT OF FACTS

Claimant's Statement of Facts is very brief, leaves out facts pertinent to the issue before the court, and is substantially composed of argument. Therefore, Defendant offers the following summary of the facts:

Prior to filing for unemployment insurance benefits effective October 19, 1980, claimant had been employed as a layout man for Eaton Metal Products from January 23, 1978, (R. 0029) or 1979, (R.0017, 0012) to October 17, 1980. (R.0029) The claimant converted to the Christian Church and subsequently quit his job in Salt Lake City to move to Indiana for the purpose of seeking religious fellowship with members of his own church. (R. 0012, 0018)

ARGUMENT

POINT I

THAT IN REVIEWING A DETERMINATION OF THE INDUSTRIAL COMMISSION UNDER THE EMPLOYMENT SECURITY ACT THE COURT WILL AFFIRM THE COMMISSION'S FINDINGS IF SUCH ARE SUPPORTED BY THE EVIDENCE.

The standard of review in unemployment insurance cases is well established. Section 35-4-10(i), Utah Code Annotated 1953; *Martinez v. Board of Review*, 25 Ut. 2d 131, 477 P. 2d 587 (1978). This court has consistently held that where the findings of the Commission are supported by evidence, they will not be disturbed. *Members of Iron Workers Union of Provo v. Industrial Commission*, 104 Ut. 242, 139 P. 2d 208. A reversal of an order of the Department denying compensation can only be justified if there is no substantial evidence to sustain the determination and the facts giving rise to a right to compensation are so persuasive that the Department's denial is clearly capricious, arbitrary, and unreasonable. *Kennecott Copper Corporation Employees v. Department of Employment Security*, 13 Ut. 2d 262, 372 P. 2d 987 (1962); *Gocke v. Wiesley*, 18 Ut. 2d 245, 420 P. 2d 44 (1966).

POINT II

THAT THE EMPLOYMENT SECURITY ACT IS TO BE LIBERALLY CONSTRUED TO ACCOMPLISH ITS OBJECTS BUT SUCH RULE DOES NOT PERMIT AN EXTENSION OF UNEMPLOYMENT COMPENSATION TO ONE WHOSE INITIAL UNEMPLOYMENT MAY BE VOLITIONAL.

Section 35-4-5(a) provides:

> 5. An individual shall be ineligible for benefits or for purposes establishing a waiting period:
>
> (a) for the week in which the claimant left work voluntarily without good cause, if so found by the commission, and for each week thereafter until the claimant has performed services in bona fide covered employment and earned wages for such services equal to at least six times the claimant's weekly benefit amount; provided that no claimant shall be ineligible for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.
>
> The commission shall in cooperation with the employer consider for the purposes of this act, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

It is a generally acknowledged rule that Employment Security statutes are construed liberally to accomplish their purposes and objectives. However, in Utah and elsewhere the courts construe such statutes in a manner which distinguishes those petitioning as beneficiaries of the Act who become unemployed for reasons attributable to themselves. This court has previously pointed out that the purpose of the Employment Security Act is to assist the worker and his family in times when he is out of work *without fault on his part. Kennecott Copper Corporation Employees v. Department of Employment Security,* supra. The court has also noted that the underlying legislative intent of the various disqualifying provisions of the Act is that the Department is to determine a claimant's eligibility for unemployment compensation by adhering to the volitional test, and declared the policy of the contributions provisions of the statute to be to establish financial reserves for the benefit of persons unemployed through no fault of their own. *Olaf Nelson Construction Company v. Industrial Commission,* 121 Ut. 521, 243, P. 2d 951 (1952).

This court has recently held that:

> The initial determination of "good cause" for voluntarily leaving employment is a mixed question of law and fact for the administrative agency. A claimant has the burden of showing good cause for leaving when he voluntarily terminates suitable employment. "Good cause" has been defined as "such cause as would similarly affect persons of reasonable and normal sensitivity, and is limited to those instances where the unemployment is caused by external pressures so compelling that a reasonable prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances." *Denby v. Board of Review of the Industrial Commission of Utah,* (Utah) 567 P. 2d 630 (1977). (Citations omitted.)

There is no dispute that claimant left his work with Eaton Metal Products voluntarily. (R. 0010, 0028) Claimant contends that he had good cause for voluntarily leaving work in order to exercise his right to freedom of religion without harassment or hardship because of his beliefs. (Plaintiff's Brief, page 2.) The Appeal Referee, as affirmed by the Board of Review, found that the claimant left work to move to Indiana which is the seat of the claimant's religious belief, to seek religious fellowship with members of his own church. (R. 0012) The Appeal Referee further

found that the job conditions under which the claimant worked were not so adverse as to compel immediate separation before the claimant had found other work. (R. 0013) The factual issue thus presented is whether the evidence supports the finding of the Appeal Referee that claimant's quit was to seek religious fellowship elsewhere or, as claimant contends, because of harassment. The applicable standards to determine "good cause" are standards of reasonableness, and the question of good cause is to be determined from the circumstances of each individual case. *Stevenson v. Morgan*, 17 Or. App. 428, 522 P. 2d 1204, 1206 (1974); *Wilton v. Employment Division*, 26 Or. App. 549, 553 P. 2d 1071 (1976). That claimant's reasons for leaving his employment under the particular circumstances of his case do not fall within the standards of "good cause" as set forth in the *Denby* case, supra, is evident from the record, as will be shown in Point III herein. The issue of law presented by this case is whether the First Amendment Right of Freedom of Religion extends the benefits of the unemployment insurance program to a claimant who quits work to seek religious fellowship in another community. In this regard it should be noted that "good cause" for leaving work has been interpreted by the Industrial Commission to include a good faith leaving on religious grounds. *General Rules of Adjudication*, Voluntary Leaving, Section 90. However, good faith leaving on religious grounds does not include *all* religious reasons for leaving work, no matter how remotely related to the work such reasons may be, but rather to those instances where conflict arises between the claimant's work and religious beliefs. This matter is more fully discussed in Point III hereof.

POINT III

THE DECISION OF THE BOARD OF REVIEW AND THE APPEAL REFEREE THAT CLAIMANT VOLUNTARILY LEFT WORK WITHOUT GOOD CAUSE IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS NOT VIOLATIVE OF THE FIRST AMENDMENT RIGHT TO FREE EXERCISE OF RELIGION.

The claimant apparently contends on appeal to the court that he quit his job with Eaton Metal Products due to harassment because of his religious beliefs. (See appeal to Board of Review, R. 0010; and Appellant's Brief, *Statement of the Nature of the Case*, page 1.) The

Appeal Referee, as affirmed by the Board of Review, specifically found, however, that claimant left work "...to move to Indiana to seek religious fellowship with members of his own church." (R. 0012) This finding is amply supported by the record.

The claimant filed his claim for unemployment benefits in October 21, 1980, (R. 0029) at which time he also completed a Statement On Voluntary Quit (R. 0028). Two responses to the questions therein illuminate the claimant's mental attitude at the time he quit:

> "What was the main reason you left work? Moving because of family and religon [sic] conflicts with parts of family."
>
> "Explain why you felt it was necessary for you to quit. List all facts that you feel are important. Moving to Ind. because religon [sic] conflicts between certain parts of the family. Job was slow so I felt it was a good time to move. Had planded [sic] to move for some time. " (R. 0028)

These statements were later supported by the claimant's testimony before the Appeal Referee:

Referee	Why was it that you left your employment?
Mr. Wilson	When I grew up I was raised in a family in the L.D.S. religion.
Referee	L.D.S. is Latter Day Saints or what?
Mr. Wilson	Latter Day Saints. It was only natural that I would follow that religion up until I decided to search on my own for my beliefs and whatnot. I got married and my wife became L.D.S., but we didn't feel right with that so later on we became Christians, following under a man by the name of William (inaudible)--
Referee	--William Brannam?
Mr. Wilson	There just wasn't anybody that believed in what we believed around so it caused a lot of family conflicts and as far as working goes I just didn't feel right working around the people that I had been working around due to religious beliefs.
Referee	You mean the people on the job had a different belief?
Mr. Wilson	Well, there wasn't a lot of conflict. It was just language and that kind of stuff.

Referee — You mean they used curse words or what?

Mr. Wilson — Yes.

Referee — Did you make a complaint to the employer regarding the use of language?

Mr. Wilson — No. I didn't want to bring religion up as the reason I quit. I didn't want to use religion--

Referee — How many followers does he have?

Mr. Wilson — He's got--well, there's followers all over but the major part of its right here in Jeffersonville, Indiana. Jeffersonville, Indiana, is where he called his headquarters and he is deceased now. There are tapes and books and everything on him and I--me and my wife just didn't feel comfortable without people we could fellowship with and stuff so we decided to move and the best place we figured we could move is where people believed the same way we believe.

Referee — How do his teachings differ from others? Say a Methodist or a Baptist or a Catholic?

Mr. Wilson — Christians live (inaudible) and you want to live like Christ did, I guess you have to try to be (inaudible) and I wasn't ever raised that way so its been a struggle for me and I just had to be around people who believe the way I did and who didn't look down on me for the way I believe. His teachings are 100% by the Bible and I guess everybody has prophets and I believe he was a true prophet and so he's the man I want to follow and look toward. There just--my parents being L.D.S. there was a conflict and I just had to move away so I came here because here is--my wife has a couple of relatives here and they follow William Brannam and we needed some fellowship. Since we've been here we've got it and things are going really smooth. Its just being around people who believe the way you believe so you don't have all the headaches and you don't have people making fun of you.

Referee — Did your co-workers make fun of you?

Mr. Wilson — No. They were always having beer parties and every once in a while they had beer at work. I use to be involved in it and when I started following this Christianity it changed my life and then people would look at me for what I was and not for what I became. There was just--not so much the guys I worked with, they were good guys and everything, it was how I felt inside myself. (R. 0017, 0018)

Such statements are clear and convincing evidence that the claimant left work to seek religious fellowship in Indiana. Although the claimant cannot be faulted for desiring to live

among those who believe the same as he, such desire does not constitute "good cause" within the meaning and intent of Section 5(a) of the Employment Security Act, and denial of benefits does not infringe on claimant's right to the free exercise of his religion.

One alleging infringement of the First Amendment free exercise clause has the burden "to show the coercive effect of the enactment as it operates against him in the practice of his religion." *Abington School District v. Schempp,* 374 U.S. 222, 223, S. Ct. 1560 (1962). Thus, in the case of *Sherbert v. Verner,* 374 U.S. 398, 83 S. Ct. 1790, 10 L. Ed. 2d 965 (1963), the claimant had been discharged by her employer for refusing to work on Saturday, which is the Sabbath Day of her faith. The claimant had become a member of the Seventh-Day Adventist Church in 1957, when her employer did not require Saturday work. In 1959 the employer found it necessary to require work on Saturdays. The United States Supreme Court held that the lower court ruling which upheld a denial of benefits forced the claimant to choose between giving up her right to unemployment benefits or abandoning one of the precepts of her religion in order to accept work. In the more recent case of *Thomas v. Review Board of the Indiana Employment Security Division,* 101 S. Ct. 1425 (1981), the claimant had worked in his employer's roll foundry which fabricated sheet steel for a variety of uses, but when the foundry was closed he was transferred to a department that fabricated turrets for military tanks. All other departments to which transfer might have been sought were engaged directly in the production of weapons, so claimant asked to be laid off. When his request was denied, the claimant quit because his religious belief precluded him from aiding in the production of items used in warfare. The Court reversed the denial of benefits, saying through Mr. Chief Justice Burger:

> Here, as in *Sherbert,* the employee was put to a choice between fidelity to religious belief or cessation of work; the coercive impact on Thomas is indistinguishable from *Sherbert,* where the Court held:
>
> > [N]ot only is it apparent that appellant's declared ineligibility for benefits derives soley from the practices of her religion, but the pressure upon her to forego that practice is unmistakable [citation omitted]. Id. at 1432.

The Chief Justice further explained the principle of law involved in cases such as this as follows:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on the adherent to modify his behavior and to violate his beliefs, a burden upon religion exists. *Id.*

The other cases cited by claimant are in accord with *Sherbert* and *Thomas*. In the instant case a denial of benefits hampers claimant's personal desire to have fellowship with others of his faith, but does not in any manner coerce the claimant to engage in conduct proscribed by his religion or to deny benefits because the claimant engages in conduct required by his religion. In other words, the claimant's employment had no impact on the exercise of his religious beliefs, as evidenced by the claimant's testimony:

Referee	Did your co-workers make fun of you? Did your employer make fun of you?
Mr. Wilson	No. They were always having beer parties and every once in a while they had beer at work. I used to be involved in it and when I started following this Christianity it changed my life and then people would look at me for what I was and not for what I became. There was just--not so much the guys I worked with, they were good guys and everything, *it was just how I felt inside myself.* (R. 0018 Emphasis added.)

It is very likely that the claimant made the right decision in moving to Indiana insofar as his personal happiness and contentment are concerned. Individuals often quit work to satisfy personal needs, such as to obtain higher pay, better working conditions or fringe benefits, to be near to (or farther from) other family members, to move to a nicer locale, etc. Such reasons for leaving work are often good personal reasons. However, unless the claimant has obtained definite assurance of other work to go to, such leaving for personal reasons is non-compelling and does not entitle the claimant to the benefits of the unemployment insurance program. *Denby v. Board of Review of the Industrial Commission of Utah,* (Utah) 567 P. 2d 630 (1977).

CONCLUSION

The evidence in this matter is clear and convincing that claimant left work in Utah to seek religious fellowship in Indiana. The record is also clear that claimant had planned on moving to Indiana for some time because of religious conflicts with some members of his family. However, claimant has made no showing that religious beliefs or problems on the job compelled him to quit work before he had obtained new work to which he could go upon leaving Utah. Given the set of facts which exist in this case, there is no alternative but to apply the disqualifying provisions of Section 5(a) of the Act. The decision of the Board of Review should, therefore, be affirmed.

Respectfully submitted this _____ day of June, 1981.

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BY _____
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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that I mailed two copies of the foregoing Defendant's Brief to Doyle Max Wilson, Pro Se, 1912 Tennyson Drive, Clarksville, Indiana 47130, this _____ day of June, 1981.

BY _____
K. Allan Zabel