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Charlotte Hanks Wurst v. Board of Review of the Industrial Commission of Utah, Department of Employment Security, and Peppermill Resort : Petition for Rehearing

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

CHARLOTTE HANKS WURST,

Plaintiff-Petitioner,

vs.

Case No. 900249-CA

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

Category No. 7

Defendants-Respondents.

PETITION FOR REHEARING

**Respondents' Petition for Rehearing of the
Amended Decision of the Court of Appeals
Filed May 2, 1991**

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IN THE UTAH COURT OF APPEALS

CHARLOTTE HANKS WURST,

Plaintiff-Petitioner,

vs.

Case No. 900249-CA

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

Category No. 7

Defendants-Respondents.

BRIEF OF RESPONDENTS

Pursuant to Rule 35, Utah Rules of Appellate Procedure, Petitioner, The Board of Review of the Industrial Commission of Utah, Department of Employment Security, respectfully petitions this Court for a rehearing in the above-entitled case. The Board of Review concurs with the Court's disposition of the matter except for the Court's remanding the case to the Board of Review for additional findings of fact regarding whether the claimant is entitled to benefits under the equity and good conscience provisions of the Utah Employment Security Act.

DISPOSITION BY THIS COURT

In an Opinion filed on May 2, 1991 in the case of Charlotte Hanks Worst v. Department of Employment Security, No. 900249-CA, slip op., this Court affirmed the decision of the Board of Review of the Industrial Commission of Utah, which held that the claimant left her employment to follow her spouse to a new locale. This Court then remanded the matter for entry of appropriate findings on the issue of the claimant's entitlement to benefits under the equity and good conscience provisions of the Utah Employment Security Act (hereinafter the Act).

STATEMENT OF FACTS

The facts of the case have been stated previously by the parties in their respective Briefs.

ARGUMENT

POINT I

SECTION 35-4-5(c) OF THE ACT CITED BY THIS COURT AS THE OPERATIVE PROVISION IN THIS MATTER, IS NOT APPLICABLE.

The Court of Appeals' decision cites §35-4-5(c) of the Act as the operative provision in this matter, claiming the claimant seeks unemployment insurance compensation under this provision. In fact, neither party made reference to §35-4-5(c). Section

35-4-5(c) deals with a refusal to accept referral to or an offer of "suitable work".

The operative provision in this case, as briefed by both parties, is §35-4-5(a) of the Act which deals with the situation of employees who have ended their employment relationship by quitting their jobs. Section 35-4-5(a) is a disqualifying provision; if a claimant is ineligible under that section, he or she cannot negate that disqualification by qualifying for unemployment insurance benefits under some other provision of the Act.

POINT II

IT IS NOT THE INTENT OF THE UTAH EMPLOYMENT SECURITY ACT TO GRANT UNEMPLOYMENT INSURANCE BENEFITS UNDER EQUITY AND GOOD CONSCIENCE IN "QUIT TO ACCOMPANY SPOUSE" CASES.

Utah Unemployment Insurance Rule R475-5a-3 spells out the elements necessary for an allowance of benefits under equity and good conscience as follows:

When the circumstances of the quit were not sufficiently compelling to justify an allowance of benefits for good cause, but there were mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront (sic) to fairness, benefits may be allowed under the provisions of equity and good conscience if all of the following elements are present:

a. the decision is made in cooperation with the employer by giving the employer an opportunity to provide information;

- b. the claimant acted reasonably;
- c. a denial would be inconsistent with the intent of the unemployment insurance program; and
- d. the claimant demonstrated a continued attachment to the labor market. (Emphasis added.)

In the majority of quit to accompany spouse cases determined by the Department of Employment Security, elements "a", "b" and "d" are satisfied in terms of claimant eligibility under equity and good conscience. In every Department decision on separation issues, employer input is sought and taken into account. Employers are sent notices of the proceedings and are invited to participate, so this element of establishing an equity and good conscience allowance is, almost without exception, met in every case. There are very few instances where it would be reasonable for a claimant to stay behind when his/her spouse is moving out of the locale. In virtually every quit to accompany spouse case it must be concluded that the claimant has acted reasonably in quitting a job to join or move with a spouse in order to avoid the financial stress of maintaining two households, the breaking up of a family, and the devastating emotional consequences for both spouses and children of being apart, all of which evidence the reasonableness of the decision to quit as the term "reasonable" is used in the equity and good conscience provision. Finally, in many quit to accompany spouse cases, claimants will

demonstrate a continued attachment to the labor market (though not in the present case).

The element necessary for allowance under equity and good conscience that is consistently lacking in quit to accompany spouse cases is element "c", "a denial would be inconsistent with the intent of the unemployment insurance program". The Utah Employment Security Act itself is specific in denying benefits to those who quit to accompany their spouses to new locales. Section 35-4-5(a) of the Act provides as follows:

. . .

Notwithstanding any other provision of this section, a claimant who has left work voluntarily to accompany, follow or join his or her spouse to or in a new locality does so without good cause for purposes of this subsection.

Granted, the language of the Act is "good cause" language and says nothing of equity and good conscience. Nonetheless, the language "Notwithstanding any other provision of this section" clearly shows the intent of the Legislature to deny benefits in quit to accompany spouse cases.

The Supreme Court has upheld this general statement of legislative intent to deny benefits in situations where jobs are left in order to join or accompany spouses.

. . . It is reasonable for the Legislature to determine, as a matter of policy, that the state need not underwrite the financial risks attendant on such a personal and voluntary

choice as the decision to attend school in another state. Therefore we hold that this classification, established to deny benefits to those who voluntarily leave work to follow or join a spouse, bears a rational relationship to the legitimate legislative goal of limiting unemployment compensation to those who become unemployed through no fault of their own. Thus, in spite of its unfortunate effects on many families, the classification offends neither the state nor the federal constitution.

Chandler v. Department of Employment Security, 678 P.2d 315, 318 (Utah 1984). While Chandler dealt solely with "good cause" and the constitutionality of the "quit to accompany spouse" issue, it appears to support the Board's interpretation that the Legislature intended to deny benefits in these cases.

The legislative history of §35-4-5(a), paragraph three, reveals that the state interest sought to be furthered by its enactment is the preservation of the fiscal integrity of the Utah Unemployment Compensation Fund. Utah Senate Debate on HB 68, January 30, 1982, page 293, House Journal, Day 16. That this is a legitimate state interest cannot be doubted. The Legislature gave effect to this objective by creating a program to insure risks of involuntary unemployment, but not all risks of all unemployment.

Unemployment Insurance Rule R475-5a-4 is also specific in stating the direct intent of the Act with regard to providing benefits for those who quit to accompany a spouse:

1. An individual leaves work without good cause, regardless of the reason for the move, if he or she quit to move with, follow or join, a lawful wife or husband, to or in a new place of residence from which it is not practical to commute to the employment. Even if such necessitous circumstances as the expense of maintaining two separate households, or the need to keep a family together, were factors in the decision to move, benefits cannot be allowed. The Utah Legislature has chosen not to insure this aspect of domestic life. The only exception to this provision is where a claimant quits to accompany a spouse who is compelled to move to a new locale for medical reasons which are beyond the control of the spouse.

Clearly, then, those who quit jobs to accompany spouses are not entitled to collect unemployment insurance benefits regardless of personal mitigating circumstances under the equity and good conscience provisions of the Act since element "c" of the equity and good conscience standard is not met in those cases as the Legislature did not intend individuals who quit employment to accompany spouses to be covered under the Act.

The Board appropriately made no specific factual findings under equity and good conscience since it had already reached the factual conclusion (affirmed by this Court) that the primary reason the claimant quit her job was to follow her spouse.

CONCLUSION

Since it is not in keeping with the intent of the Act to allow benefits in quit to accompany spouse cases, regardless of

reasonable personal mitigating circumstances, it would be inappropriate for this matter to be remanded for findings under equity and good conscience. The Board of Review of the Industrial Commission of Utah, Department of Employment Security, therefore respectfully requests that the Court's decision in this matter be amended to omit such a requirement.

Respectfully submitted this 16th day of May, 1991.

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CERTIFICATE OF MAILING

I DO HEREBY CERTIFY that I mailed four copies of the foregoing Petition for Rehearing, postage prepaid, to the following this 16th day of May, 1991:

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