1982

St. Benedict's Hospital v. Board of Review of the Industrial Commission of Utah and Carol Petersen : Brief of Plaintiff

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

- -

ST. BENEDICT'S HOSPITAL,

Plaintiff,

vs. No. 18120

BOARD OF REVIEW OF THE
INDUSTRIAL COMMISSION OF
UTAH, and CAROL PETERSEN,

Defendants.

- -

BRIEF OF PLAINTIFF

- -

Review from an Order of
the Industrial Commission of Utah
Department of Employment Security

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NATURE OF THE CASE

This is an original proceeding brought before this Court to review the decision of the Board of Review of the Industrial Commission concerning a claim for unemployment compensation by defendant Carol Petersen.

DISPOSITION BEFORE THE COMMISSION

After unemployment compensation was initially denied by the Utah Department of Employment Security, a hearing was held before an appeals referee. The referee affirmed the denial of compensation based upon the finding that defendant Carol Petersen had voluntarily terminated her employment without good cause. The decision of the referee was appealed to the Board of Review which reversed the

previous finding and held that Carol Petersen was entitled to unemployment compensation.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the decision rendered by the Board of Review and restitution of any amounts debited to Plaintiff's reserve account for the use and benefit of defendant Carol Petersen.

STATEMENT OF FACTS

The facts in this controversy are relatively simple as evidenced by the small record filed in this matter. In order to simplify the existing record, however, Plaintiff will describe the chronological events occurring after defendant Carol Petersen's termination from St. Benedict's Hospital and will describe the circumstances of the termination as part of the proceedings during the appeal's referee hearing.

On July 8, 1981 Carol Petersen applied with the Utah Department of Employment Security for unemployment benefits. (R. 41). Shortly thereafter, a form was sent to St. Benedict's Hospital stating that Mrs. Petersen had given the reason for separation as "quit to accept other employment." The Hospital replied that the reason for unemployment was "voluntary resignation to stay home with family." (R. 40).

Petersen filed a form entitled "Claimant's Statement on Voluntary Quit" and stated that the main reason she left

work was "informed employer that I would be leaving later in the year--told to quit now." (Emphasis added). She further stated that she had interviewed with Hill Air Force Base and had a verbal promise of employment and was waiting for an opening. She stated she had no intention of leaving then. (R. 39). The examiner disqualified Mrs. Petersen from unemployment compensation on the grounds that she quit without good cause because of personal reasons. "Claimant's actions caused her to become unemployed." (R. 39).

In reaching this decision the examiner had interviewed Joe Featherston, the hospital's administrative supervisor, who stated that Petersen had gone to her immediate supervisor and told her she would be quitting in order to stay home with her family. She was told she would have to give thirty days notice and at the end of the thirty days she quit. Featherston told the examiner "nothing was mentioned of the claimant looking for other work." (R. 38).

Petersen was notified of this decision (R. 37) and shortly thereafter filed an appeal from the decision of the representative. She stated in her written statement that she left because of severe harrassment by her supervisor who she believed wanted to hire another nurse in her place. She wrote "I decided I could no longer stand untrue and highly emotional accusations of what a bad person I was."

She further stated that she was forced out of her position and that she believed she was entitled to compensation until she could find further work either in patient education or inservice. (R. 35-36).

On August 7 a notice was sent to Petersen that a hearing would be held on August 17 before the appeals section of the Department of Employment Security to determine whether the claimant was able to work and was available for work, whether the claimant voluntarily left work without good cause, and whether the claimant was discharged for an act or omission in connection with employment. (R. 34).

On August 18 the appeals referee entered findings that the claimant Carol Petersen had failed to appear for the hearing and therefore affirmed the determination of the department representative that she was not entitled to compensation since she had left work voluntarily without good cause. (R. 33).

On August 24 a "Notice to Appeals Section" was received in which it was stated by defendant Carol Petersen that she had been out of town when the notice to appear had arrived and did not return until after the hearing had been held. She requested a further hearing which was granted by the appeals referee for September 1, 1981. (R. 31-32).

On September 1, 1981 a hearing was held before Jerold E.

Luker, the appeals referee, with the claimant Carol Petersen testifying on her behalf and Joe Featherston testifying on behalf of St. Benedict's Hospital. A copy of this transcript is contained in the record. (R. 19-29). Briefly, Petersen stated that she was not working at the time of the hearing but had taught a class at Hill Air Force Base for a short period of time for a set fee of $100.00. (R. 19-20). Prior to this she stated she had worked at St. Benedict's Hospital in orientation and patient teaching which included instructing new nurses that are hired at the hospital and also giving patients instruction on such things as diabetic treatment and pacemaker care. She noted that she was a registered nurse with a B.S. degree. (R. 19-20).

Petersen stated that the reason she quit was that she had felt harrassed from her supervisor. She stated that this "harrassment" had been going on for a couple of months and that she finally went to Mr. Featherston to speak with him concerning it. Petersen told Featherston that her supervisor kept informing her that she was not producing, was not doing her job, and always spoke with her at inappropriate times.

Petersen testified that at the meeting Mr. Featherston stated that he could see there was bad chemistry going on and it was decided by both of them that she should take a

leave of absence. She testified she did not want to quit St. Benedict's and had no intentions of ever quitting but, on the other hand, she said she could not stay in the environment because she was becoming physically ill. She admitted she had not sought a doctor's advice concerning her working conditions but diagnosed the problem herself since she was a nurse. (R. 23). Petersen proposed that her leave of absence should run two or three months until she could get her self-esteem back together. She had no intention to work elsewhere during that period of time.

She stated that there were other positions in the hospital that could use her training and experience but that she was denied a request for transfer. She wanted to transfer into a coronary care unit where she had previous training. Her employer denied this request but offered her to be a staff nurse in an unfamiliar area.

She related that she did not try to find any employment at the South Davis Hopsital and that she had learned from a friend in mid-May there was nothing available at the McKay-Dee Hospital. (R. 23).

After talking to Mr. Featherston, Carol Petersen stated she went to see Pat Brown, Director of Nursing. Brown told her that she could not take a leave of absence and could not work in the coronary care unit. She said she could still

work at the hospital in other areas but Petersen felt these areas were not in her field of expertise.

Petersen stated that she asked Mr. Featherston what she needed to do in order to leave. He told her she would have to write a letter of resignation. Petersen stated that her supervisor typed out a little statement which said she would be leaving June 30 and "made me sign it." (R. 24).

Petersen testified that she was really sorry she signed it and that she should not have been pressured into it. She did not go over her supervisor's head to try to obtain an extra month since she just "gave up." She stated that she believed her supervisor made her sign the paper in order that she (Petersen) would be gone by June 30 since another girl would be coming in on July 1 who her supervisor wanted in Petersen's job. Petersen explained that she thought the sole purpose in pressuring her was to allow this other girl to begin work on July 1 since the new girl's husband had just started work at another hospital and they both wanted to begin at the same time. (R. 25).

Joe Featherston testified on behalf of the employer St. Benedict's Hopsital. Mr. Featherston stated he was St. Benedict's Director of Human Resources and Support Services. He related that he was not Petersen's immediate supervisor but was the administrative person over that area.

Mr. Featherston recalled that Carol Petersen had come to him and told him she felt harrassed. Because of Mr. Featherston's prior discussions with Petersen's supervisor, he knew there had been attempts to try to get Petersen to come up to standard in a number of areas including absenteeism. He stated that Carol Petersen would plan trips without getting prior approval from her supervisor and that her general performance level was not up to what it should have been. He stated that her supervisor was attempting to counsel her to get her up to a performance and attendance standard that could be accepted. (R. 26).

During the conversation Mr. Featherston testified that Petersen stated her supervisor had been harrassing her and that there seemed to be no way to please her. Mr. Featherston stated, "She seemed to be at a point where she was willing to just chuck it and quit." Featherston suggested that she should transfer to another area and arranged for an interview with Pat Brown, Director of Nursing.

Petersen was not placed in the coronary care unit since her best friend was the head nurse of that unit and the administration felt that it would not be a healthy relationship for either of them. Mr. Featherston stated "it would put undue pressure on the head nurse for that type of relationship and it wouldn't be healthy for Carol either."

Petersen was offered a night position but she did not accept it. After her conversation with Pat Brown, Petersen came back to Mr. Featherston and said "I'm going to quit." She told Mr. Featherston that she had talked to her supervisor and told her she would be available through July but Mr. Featherston related that the hospital policies required only thirty days notice and that it would be in the best interests of everyone to only have thirty more days of work rather than sixty. (R. 25). Had Petersen told him that she wished to work through July it possibly could have been arranged.

During the thirty-day period Petersen again talked to Mr. Featherston and told him she was surprised that she only had thirty days left. Mr. Featherston explained to Petersen that the hospital policy was thirty days in order to allow a new person to fill the position.

Mr. Featherston testified that the hospital had a policy and procedure for harrassment and that each employee received a manual describing the formal grievance procedure. (R. 27). He recalled that Petersen never utilized this procedure in complaining about the harrassment. Featherston also denied that Petersen had been pushed out for the purpose of making room for another person since the hospital did not begin its search until after she gave the hospital her notice of

her intention to terminate employment. The search was both internal and external and it took some time before the proper candidate was found.

On rebuttal Petersen admitted that there was a grievance policy procedure at the hospital but did not follow it because she thought complaining to Mr. Featherston would be enough. (R. 28-29). She stated that she believed she had been harrassed by the actions of her supervisor in criticizing her at strategic times and preventing her from doing needed things. She concluded by saying that she did not appeal this harrassment since her supervisor was a powerful person and she did not feel she would have any chance in swaying judgments. (R. 29).

On September 16, 1981 a decision was rendered by the appeal referee concluding that the claimant Carol Petersen had voluntarily left work without good cause. Basically, the referee found that the claimant's work had not been fully accepted and that she had been reprimanded by her supervisor for the areas of deficiency but that her job was not in jeopardy and the employer did not plan to discharge her. He found that the claimant did not have any prospects for more suitable work at the time she left St. Benedict's Hospital. The referee concluded that since Petersen made no attempt to extend an additional month after signing the notice of

resignation that she voluntarily agreed to the June 30, 1981 date. He concluded by stating:

> There is evidence that the claimant had less than a fully satisfactory relationship with her supervisor. The poor relationship appears to have been due to the claimant's rejection of instructions given to her by her supervisor in the normal course of supervisor/subordinate interactions, and not to any willful attempt by the supervisor to harrass the claimant. Personnel policy of the hospital as contained in written information made available to the claimant provides an avenue for relief to employees who feel they have been wrongfully or unfairly treated. The claimant was aware of the remedies available to her, yet she chose not to pursue them. The appeals referee concludes that the situation was not so compelling as to constitute good cause for leaving work within the meaning of the Utah Employment Security Act. (R. 15-16).

On September 24, 1981 Petersen wrote a letter to the appeals referee responding to the decision. (R. 12-14). A rebuttal to Mrs. Petersen's letter was filed by Mr. Featherston on October 2, 1981. (R. 9-10). An appeal was docketed with the Board of Review of the Industrial Commission and a decision was rendered by the Board on November 10, 1981. The decision of the appeals referee was reversed. The Board gave the following explanation for the reversal.

> In reversing the decision of the Appeal Referee the Board of Review notes the claimant's testimony that on several occasions she was criticized by her supervisor just before conducting training sessions and that she was denied a transfer to another assignment for which she was experienced solely because the supervisor of the new unit would have been a friend of the

> claimant's. The claimant's testimony regarding these circumstnaces was undisputed by the employer's representative. Although such circumstances are not compelling and therefore do not constitute good cause, they are sufficiently mitigating as to give reason to the claimant's decision to leave work. The record indicates that the claimant immediately commenced a search for work upon leaving her employment. Therefore, a denial of benefits in the instant case would be contrary to equity and good conscience. (R. 6). (Emphasis added).

It is from this decision that the present petition for writ of review is taken. (R. 2).

ARGUMENT

THE DECISION OF THE BOARD OF REVIEW WAS ERRONEOUS IN THAT IT INCORRECTLY INTERPRETED THE UNEMPLOYMENT SECURITY ACT IN A MANNER CONTRARY TO LAW.

Plaintiff acknowledges that in order to overturn the decision of the Board of Review it must show that such decision was arbitrary, capricious, unreasonable, or as a matter of law the determination was wrong. Continental Oil Co. v. Board of Review of Industrial Commission, 568 P.2d 727 (Utah 1977). However, even with this difficult burden Plaintiff believes that in the instant case the Board of Review clearly erred as a matter of law and therefore must be reversed.

The statute upon which compensation was originally denied is found in Section 35-4-5(a) in the 1981 pocket supplement to the Utah Code. This section has been amended several times with the last amendment being in 1979.

Prior to the 1979 amendment the statute provided that an individual would be ineligible for benefits if the claimant left work voluntarily without good cause. Thus, the previous standard of "good cause" had been established for many years and this Court defined such requirement in Denby v. Board of Review of the Industrial Commission, 567 P.2d 626 (Utah 1977).

In the Denby case this Court quoted from various authorities in elaborating the "good cause" requirement of the statute. This Court stated the following:

> What is "good cause" must reflect the underlying purpose of the act to relieve against the distress of involuntary unemployment. The seeming paradox of allowing benefits to an individual whose unemployment is of his own volition disappears when the context of the words is viewed in that light. The Legislature contemplated that when an individual voluntarily leaves a job under the pressure of circumstances which may reasonably be viewed as having compelled him to do so, the termination of his employment is involuntary for purposes of the Act. In statutory contemplation he cannot then reasonably be judged as free to stay at the job. Id. at 630.

This Court further elaborated the procedure for establishing "good cause" and its definition by stating the following:

> The initial determination of "good cause" for vountarily 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 reasonably prudent person, exercising ordinary common sense and prudence, would be justified in quitting under similar circumstances. Id. at 630.

The "good cause" standard is adopted throughout the country to determine whether voluntary termination justifies unemployment compensation. Cases similar to the instant one have held that "good cause" is not established when a superintendent criticizes a worker for substandard work, Boodry v. Eddy Bakeries Co., 397 P.2d 256 (Idaho 1964), and when an employee fails to follow grievance procedures as to disputes in the conditions of employment. Beaman v. Aynes, 393 P.2d 152 (Ariz. 1964).

The Board of Review in this case recognized that the claim by Carol Petersen of harrassment by her supervisor was not substantiated by the facts and that the evidence showed she was being reprimanded for substandard performance. The Board also recognized that her failure to be transferred to another unit upon request did not constitute good cause. Specifically, the Board stated that such "circumsntaces are not compelling and therefore do not constitute good cause." (R. 6).

The error in the Board's decision results from the language contained in the 1979 amendment to Section 35-4-5(a).

The present statute still retains the original "good cause" language for compensation but then states the following additional caveat:

> 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.

The 1979 amendment has created an apparent inconsistency in the application of this section. The first portion of the statute requires a "good cause" determination if benefits are to be received. The added portion, however, seemingly negates this requirement by applying a standard of "equity and good conscience."

Plaintiff has been unable to find any similar wording of a statute in the United States in which "equity and good conscience" applies to qualifications of unemployment benefits. The term, however, is frequently used in statutes in which over-payment of claims has occurred and the recipient claimant is requested to pay back the previous wrongful payments.

These decisions indicate that the term "equity and good conscience" is "an elastic expression" of "unusual generality"

which "anticipates that the trier of fact, instead of attempting to channelize his decision within rigid and specific rules, will draw upon precepts of justice and morality as the basis for his ruling." See City of Leadville v. Sewer Co., 107 P. 801 (Colo. 1909); Gilles v. Dept. of Human Resources Development, 521 P.2d 110 (Cal. 1974).

The Gilles decision is the leading authority on describing the terms "equity and good conscience." This decision noted that the term had its probable source from the 1974 Social Security Act. The Act defined these terms as follows:

> Against "equity and good conscience" means that adjustment or recovery of an incorrect payment . . . will be considered inequitable if an individual, because of a notice that such payment would be made or by reason of the incorrect payment, relinquished a valuable right . . . or changed his position for the worse. . . . 20 C.F.R. 404.509 (1979).

The California Supreme Court noted that the term "equity and good conscience" is an extremely general term with virtually no boundary or limitation except in the mind of the chancelor. The court noted that Black's Law Dictionary states the following:

> The term "equity" in its broadest and most general signification . . . denotes the spirit and habit of fairness, justice, and right dealing which would regulate the intercourse of men with men. . . . [In] this sense its obligation is ethical rather than jural, and its discussion

> belongs to the sphere of morals. It is grounded in the precepts of the conscience, not in any sanction of positive law. In a restricted sense, the word denotes equal and impartial justice . . .; justice, that is, as ascertained by natural reason or ethical insight, but independent of the formulated body of law. 521 P.2d at 116, fn. 10.

The court noted that "conscience" is defined in similar generality and that the term "ignores reason, defies argument, and is unaccountable and irresponsible to all human tests and standards; it is a law unto itself, and its scruples, and its teachings are not amenable to human tribunals, but rests alone with its possessor and his God." Id. See also, Duenas-Rodriguez v. The Industrial Commission, 606 P.2d 437 (Colo. 1980); Gettinger v. Celebrezze, 218 F. Supp. 161 (D. N.Y. 1963).

Thus, the Board of Review conceded that the claimant had failed to establish "good cause" for terminating her employment but determined under the "equity and good conscience" standard the criticism by her supervisor and the failure to be transferred to another department were "sufficiently mitigati to give reason to the claimant's decision to leave work." (R. 6).

The interpretation by the Board of Review of this statute should not stand. Under this interpretation even when good cause is not shown the vague, general, and unlimited standard of "equity and good conscience" is applicable which, as stated

above, contains no limitations or judicial standards for review. Thus, while a court could determine if "good cause" is present in a situation it cannot determine the "equity and good conscience" of the Commission in reviewing each case.

The interpretation given by the Board of Review would make the "good cause" language in the statute meaningless. Obviously, there is no point in even determining "good cause" if the Commission has an unlimited ability to determine in equity and good conscience whether the circumstances justify a disqualification. This interpretation, therefore, makes the statute completely inconsistent by requiring a standard and defined definition at the beginning of the statute but overriding such definition by a broad and unlimited term at the end of the statute.

It is common statutory construction that when possible a court must give every word, phrase, clause and sentence of a statute a consistent and reasonable meaning. Robinson v. Union Pacific Railway Co., 261 P. 9 (Utah 1921). If there is doubt or uncertainty as to the meaning or application of a provision it is appropriate to analyze the act in its entirety, in light of its objective, and to harmonize its provisions in accordance with legislative intent and purpose. Osuala v. Aetna Life & Casualty Co., 608 P.2d 242 (Utah 1980).

Likewise, this Court has held on numerous occasions that the doctrine of ejusdem generis requires that specific provisions prevail over more general expressions when determining the meaning or application of a provision of an act. Id.

Applying this doctrine to the instant case and statute results in the following analysis. The Legislature intended to further define the phrase "good cause" by the 1979 amendment. It requested that the Commission in determining good cause 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." This interpretation is consistent with the Denby opinion of this Court in which this Court held that a claimant must expose himself unequivocally to the labor market in order to receive compensation and that good cause exists when a reasonably prudent person exercising ordinary common sense would be justified in quitting under similar circumstances.

In other words, the statute as written places the same tests for "equity and good conscience" i.e., "the reasonableness of claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market" as does the definition of "good cause" as elaborated in the Denby decision.

While this statute is unartfully drawn the drafters could not have intended to apply two different standards to the same factual situation. If the term "good cause" is to have any meaning whatsoever then it must be read in conjunction with the "equity and good conscience" language as a standard in determining good cause. To view the two standards separately completely defeats any purpose in arriving at "good cause" since such a determination then becomes immaterial to the normally accepted, broad, and unlimited definition of "equity and good conscience."

In the instant case, the Board of Review should have determined whether defendant Carol Petersen acted in a reasonable manner and showed a genuine continuing attachment to the labor market in determining whether "good cause" had been established. Had it done so in terms of the "good cause" standard it would have concluded that the claimant was not entitled to unemployment compensation.

It would not be reasonable for a person to leave their employment merely because they have been criticized on several occasions by their supervisor regardless of when these occasions occurred. Likewise, it would not be reasonable for a person to leave their employment when they are denied a transfer due to the employer's policy of preventing conflicts between best friends in a subordinate and superior

position. The Board would have concluded that these factors were not sufficient to justify the voluntary termination under the "good cause" mandate.

For this reason, the decision of the Board of Review as it is now written should not prevail. The decision must be reversed as a matter of law based upon the evidence existing in the record or, in the alternative, the matter should be remanded to the Board of Review so that it can apply the appropriate standard.

CONCLUSION

The present appeal involves the first time this Court has dealt with the 1979 amendment to Section 35-4-5(a), U.C.A. It is important that the seemingly inconsistent language contained in this subsection be reconciled by this Court in order to establish a future standard for review in the numerous cases which arise regarding voluntary termination of employment.

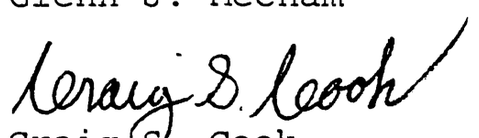
The Legislature could not have intended to give the Board of Review two standards to apply in these types of cases. While the "good cause" standard uses established criteria and guidelines the other "equity and good conscience" standard can have no judicially reviewable criteria. Thus, it must be assumed that the Legislature intended on merely further defining "good cause" rather than abolishing it.

The problem simply reduces itself to the question of whether a person has left work voluntarily for "good cause" or not. If the person has a reasonable basis for having left work and the actions show a genuine continuing attachment to the labor market then good cause is present. If, on the other hand, the actions of the claimant are unreasonable or do not reflect a continuing attachment to the labor market, then good cause has not been shown. The use of the "equity and good conscience" language cannot be utilized to circumvent the "good cause" requirement.

For these reasons Plaintiff respectfully requests that this Court reverse the determination made by the Board of Review and hold as a matter of law that the evidence does not justify defendant Carol Petersen's claim for unemployment compensation. In the alternative, this matter should be remanded to the Board of Review for application of the correct legal standard.

Respectfully submitted,

Glenn J. Mecham



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CERTIFICATE OF SERVICE

I hereby certify that I mailed first class, postage prepaid, two true and correct copies of the foregoing Brief of Plaintiff to Floyd G. Astin, K. Allan Zabel, Special Assistants to the Utah Attorney General, 174 Social Hall Avenue, Salt Lake City, Utah 84147, Attorneys for Defendants, this 25 day of January, 1982.

Craig Cook