1982

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

Utah Supreme Court

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Floyd G. Astin; K. Allan Zabel; Attorneys for Defendants;

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.

- -

REPLY BRIEF OF PLAINTIFF

- -

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

- -

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REPLY BRIEF OF PLAINTIFF

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INTRODUCTION

—and that shows that there are three hundred and sixty-four days when you might get un-birthday presents—"

"Certainly," said Alice.

"And only *one* for birthday presents, you know. There's glory for you!"

"I don't know what you mean by 'glory,' " Alice said.

Humpty Dumpty smiled contemptuously. "Of course you don't—till I tell you. I meant 'there's a nice knock-down argument for you!' "

"But 'glory' doesn't mean 'a nice knock-down argument,' " Alice objected.

"When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."

"The question is," said Alice, "whether you *can* make words mean so many different things."

"The question is," said Humpty Dumpty, "which is to be master—that's all."

Alice was too much puzzled to say anything: so after a minute Humpty Dumpty began again. "They've a temper, some of them—particularly verbs: they're the proudest—adjectives you can do anything with, but not verbs—however, *I* can manage the whole lot of them! Impenetrability! That's what *I* say!"

"Would you tell me, please," said Alice, "what that means?"

"Now you talk like a reasonable child," said Humpty Dumpty, looking very much pleased. "I meant by 'impenetrability' that we've had enough of that subject, and it would be just as well if you'd mention what you mean to do next, as I suppose you don't mean to stop here all the rest of your life."

"That's a great deal to make one word mean," Alice said in a thoughtful tone.

"When I make a word do a lot of work like that," said Humpty Dumpty, "I always pay it extra."

"Oh!" said Alice. She was too much puzzled to make any other remark.

"Ah, you should see 'em come round me of a Saturday night," Humpty Dumpty went on, wagging his head gravely from side to side, "for to get their wages, you know."

Lewis Carroll, Through the Looking-Glass, pp. 268-270, 3rd. Ed. (1968).

This appeal is solely directed to the meaning of words. As is the case in all statutory construction litigation what the words of the statute mean and how they are applied are the only issues to be decided on appeal. Plaintiff St. Benedict's Hospital asserts that the Board of Review of the Industrial Commission of Utah, like Humpty Dumpty, uses words in a manner it chooses it to mean regardless of the true meaning of such words.

The words now in dispute in this appeal are "good cause" and "equity and good conscience." The meaning of these two phrases is the sole issue in this appeal and Plaintiff will therefore reply to the arguments raised by the defendants in support of their interpretation of these words.

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 does not disagree with the Statement of Facts, or the arguments contained in Point I, II and II of Defendants' Brief. (Defendants Brief, pp. 2-6). Plaintiff would, however,

make several observations.

First, Plaintiff believes that the record is clear that nurse Petersen told Mr. Featherston of the problem she was having with her supervisor as is evidenced by the dialogue on pages 21 and 22 of the transcript. Since this factual dispute is immaterial to this appeal no further comment is necessary.

Second, there is no doubt that the standard of review in these types of cases is difficult for the plaintiff to sustain. In cases involving an interpretation of facts, for example, this Court will almost universally uphold the decision of the Board of Review providing there is any evidence to support its findings. However, when the Board of Review has obviously misinterpreted the law as is evidenced by its own decision, a reversal is justified.

Third, Plaintiff agrees that the purpose of the Employment Security Act is to assist a worker and his family during times of unemployment and to help maintain the purchasing power of the unemployed person and his family in the economy. However, the Legislature has clearly indicated that not all unemployed persons, regardless of the purpose of employment compensation, are entitled to unlimited benefits merely because they are unemployed. The numerous reasons why unemployment insurance cannot be given to a person as ennunciated in

the statutes show that this legislative intent is carefully defined to only those persons who are deemed deserving of these benefits.

Plaintiff vigorously opposes the contentions raised in Point IV of Defendants' Brief concerning the correct interpretation of Section 35-4-5(a) of the Employment Security Act. (Defendants' Brief, pp. 7-15). As to Point V, Plaintiff will not respond into justifying the decision of the Board of Review or further reviewing the evidence in that the Board incorrectly applied an erroneous standard of review and therefore detailed arguments as to the justification of this standard serve no purpose.

Plaintiff would also request the Court in considering this case review the facts and arguments raised in Case No. 17922 entitled "Salt Lake City Corporation v. Board of Review of the Industrial Commission of Utah and Marian Lynch." While portions of that appeal go beyond the issues raised in this appeal, the same contention of misinterpretation of Section 35-4-5(a) U.C.A. was also raised in that case. In that instance, the Board of Review also determined that there was no good cause for the Salt Lake City employee to quit her job but decided that the decision to resign was reasonable and therefore granted the employee full benefits.

Both parties heretofore have quoted the statute now in

dispute, Section 35-4-5(a). To briefly review, however, the statute allows benefits to be paid to an unemployed individual if the person left work voluntarily with good cause. The statute also provides, however, 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.

Finally, the statute seemingly defines equity and good conscience as the reasonableness of the claimant's actions and the extent to which the actions evidence a genuine continuing attachment to the labor market.

The Appeals Referee specifically stated in his Findings that the defendant Carol Petersen did not terminate her employment with good cause. The Board of Review agreed with this conclusion and stated that the reasons given by Mrs. Petersen "are not compelling and therefore do not constitute good cause." (R. 6). The Board, however, held that these same reasons were "sufficiently mitigating to give reason to the claimant's decision to leave work" and therefore it would be a denial of equity and good conscience not to allow benefits.

The interpretation by the Board of Review on its face indicates the existence of two separate standards. First, a standard determining whether good cause has been found and secondly whether even in the absence of good cause a claimant

can receive benefits since the denial would be against equity and good conscience. If, indeed, there were two separate standards and two separate sets of criteria to be used in determining these two concepts the decision of the Board of Review would be supportable. However, there is no such double standard and, as elaborated in Plaintiff's Brief in chief, the standard for both "good cause" and for "equity and good conscience" is identical. This identical stanard can be seen as follows:

The term "good cause" has been defined both by this Court and by the regulations of the Industrial Commission itself. In Denby v. The Board of Review of the Industrial Commission, 567 P.2d 626 (Utah 1977) the court noted that a claimant must be available for work and must be genuinely attached to the labor market. The court further noted that "good cause" is a cause which would similarly affect persons of reasonable and normal sensitivity and where the pressures of the employment are so compelling that a reasonably prudent person would be justified in quitting under similar circumstances. The court also noted that it was the burden of the claimant to prove that good cause existed. See also, Box Elder County v. Industrial Commission of Utah, 632 P.2d 839 (Utah 1981).

The Industrial Commission has similarly defined "good

cause" for unemployment benefit purposes as follows:

> "Good cause", as used in the unemployment insurance system, is such a cause as justifies an employee's voluntarily leaving the ranks of the employed and joining the unemployed; the leaving must be for such cause as would reasonably motivate in a similar situation the average worker to give up employment with its wage rewards to become unemployed. The terms suggest, as minimum requirements, real circumstances, substantial reasons, objective conditions, perceivable forces, adequate excuses that will bear the test of reason, just grounds for action. To constitute good cause, the circumstances which compel the decision to leave must be real, not imaginary; substantial, not trifling, and reasonable, not whimsical. There must be some compulsion from some outside and necessitous circumstance. The standard of what constitutes good cause is the standard of reasonableness as applied to the average individual and not to the supersensitive. Rule A71-07-2:7i(2), Rules of Adjudication, Industrial Commission of Utah.

These definitions clearly show that "good cause" is determined by the "reasonableness" of the claimant's actions and by his attachment to the labor force.

The terms "equity and good conscience" as noted in Plaintiff's prior Brief are normally defined as conditions which have almost unlimited discretion on the part of the arbitrator. What is "equitable" or "in good conscience" depends upon the reviewer's sense of justice and may easily vary from individual to individual.

The defendants, however, reject this normal standard and contend that the Legislature structured the discretion the

Commission may exercise. The defendants argue that the statute itself limits the terms of "equity and good conscience" by its own definition. (Defendants' Brief, p. 12). Assuming arguendo that this claim is true a total circle of definitions has been reached. Section 35-4-5(a) states the following:

> 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.

Thus, assuming the defendants' argument is correct the definition of equity and good conscience as limited by the statute itself is one of "reasonableness" and a continuing "attachment to the labor market."

It is obvious, therefore, that the definitions of both "good cause" and "equity and good conscience" are identical. Seemingly, a person who is reasonable in quitting his employment would have good cause for such quitting and it would not be contrary to equity and good conscience to allow him benefits. Conversely, a person who is unreasonable in quitting his job and who has no genuine continuing attachment to the labor market would not have good cause for quitting nor would it be contrary to equity and good conscience to impose a disqualification.

The decision of the Board, however, when paraphrased in light of its findings would be as follows: The claimant was criticized by her supervisor before conducting training sessions and 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. It was not reasonable for claimant to leave her employment and therefore there is not good cause for termination. However, the criticism by her supervisor and the denial of transfer was a reasonable basis for the claimant to leave work and this, together with the fact she immediately commenced a search for work upon leaving her employment requires that benefits be paid since to do otherwise would be contrary to equity and good conscience.

As is patent on its face, the actions of the claimant cannot be both reasonable and unreasonable at the same time thereby requiring denial of the benefits because of their unreasonableness but reinstating the benefits because of their reasonableness.

The defendants admit that the "equity and good conscience" language is not found in any other statutes in the country and therefore requests that this Court examine the legislative history of the passage of this act. While it is no doubt relevant to examine legislative history Plaintiff does not

believe that the defendants have produced relevant testimony or documents germane to such history.

Whatever lobbying efforts took place on behalf of the advisory council or whatever opinions were given by the Department of Employment Security as to the interpretation of the proposed legislation is irrelevant in determining legislative intent. Murphy v. Nilsen, 527 P.2d 736 (Ore. App. 1974). Likewise, any statements made by Defendants' counsel during hearings is not relevant to legislative history. Henthorn v. Grand Prairie School District No. 14, 601 P.2d 1243 (Ore. 1979). It is well settled that statements by legislators or even committee reports do not necessarily reflect the purpose which the majority of legislators believed was being carried out by the passage of a statute. Yoshizaki v. Hilo Hospital, 433 P.2d 220 (Hawaii 1967).

It is interesting to note from the purported legislative history that the defendants' own administrator acknowledged that "good cause" was still to be determined by the definitions of this Court. (Appendix 2 of Defendants' Brief). On the other hand, however, Defendants argue that the term "reasonable" cannot have the same meaning under the equity and good conscience provision as it does under the "good cause" standard since there would have been no need for the exception to be negotiated by the labor and management representatives on the advisory

council unless the definitions were different. (Defendants' Brief, p. 11).

Whatever may have been the hopes of the advisory council or the purposes of the lobbyists in sponsoring the bill, the fact remains that the present statute incorporates both the term "good cause" and specifically defines "equity and good conscience" in the act itself. Whereas under the prior act the Commission was given discretion in assessing the penalty of a claimant who failed to quit with good cause, i.e., whether the claimant would be penalized one to six weeks with no benefits. The new law specifically provides no such unlimited discretion on penalty but merely states the criteria to be used in determining initial liability.

Thus, whereas under the prior law the Commission could have found Mrs. Petersen to have quit with no just cause but could have decided to only penalize her for one week period. The present law requires the Commission to either grant her full benefits (by finding that she quit with cause and that benefits should be extended to her in equity and good conscience) or to deny all benefits to her (finding she quit without cause and that denial of benefits is equitable and conscionable). Thus, the same standard of determining "causation" also determines the "penalty" that the claimant will receive. There is no longer a provision allowing a partial penalty to a person

quitting without good cause.

In summary, if the statute as written is to be harmonized at all the terms "equity and good conscience" must be used in conjunction with findings of good cause and not in an attempt to establish a second standard. To do so produces an absurd consequence as in this case where the Board of Review finds the same actions of the claimant to be both reasonable and unreasonable at the same time. It is a cardinal rule of construction that statutes should not be applied to lead to incongruous results which were never intended by the Legislature. Snyder v. Clune, 390 P.2d 915 (Utah 1964). The statute must be given reasonable and sensible construction to prevent such absurd consequences. Curtis v. Harmon Electronics, Inc., 575 P.2d 1044 (Utah 1978).

The sole standard that should be raised on appeals such as this is the reasonableness of the claimant's actions and the claimant's continuing attachment to the work force. In such a case if the Board finds the actions of the claimant reasonable and finds a continuing attachment to the work force an employer can only appeal if he believes the evidence does not justify that decision. If, on the other hand, the Board finds the actions to be unreasonable or finds no attachment to the work force the employee would then have to decide whether the evidences justifies the decision. The arguments

raised, for example, in Point V of the Defendants' Brief would be properly addressed to this Court were the evidence being attacked.

The present interpretation of the Board, however, is illogical and contrary to law. It is impossible for the Board to justify its decision that no good cause is present by showing that the claimant was unreasonable or showed no continuing attachment to the work force and then, at the same time, decide that the same circumstances show a reasonableness of the actions of the claimant and a continuing attachment to the work force justifying the equitable and good conscience exception which they claim exists to the good cause standard.

There can be only one determination of benefits based upon the criteria established by this Court and by the agency itself. Whether the terms be called "good cause", "equity and good conscience", or "kinetic streams of awareness" (or any other term the interpreter desires) the criteria used to define these terms must be uniform and must be in conformity to this Court's prior decisions and the rules of the agency itself.

To allow anything other than this type of interpretation creates only chaos, confusion, and a breakdown of all standards of the unemployment system.

CONCLUSION

For the preceding reasons, therefore, this Court should affirm the findings of the Appeals Referee and of the Board of Review finding no "good cause" for the termination of claimant's employment and should deny claimant all benefits or, in the alternative, should remand this matter to the Board of Review for the purpose of reconsideration in light of one and only one appropriate standard of consideration.

Respectfully submitted,

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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 Reply 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 _____ day of November, 1982.

_____